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CORRESPONDENCE,

REPORTS OF THE MINISTER OF JUSTICE

AND

ORDERS IN COUNCIL

UPON THE SUBJECT OF

PROVINCIAL LEGISLATION

1901-1903

COMPILED UNDER THE DIRECTION OF THE HONOURABLE
THE MINISTER OF JUSTICE.

BY

W. E. HODGINS, M.A.,
Barrister at Law, of the Department of Justice.

OTTAWA
GOVERNMENT PRINTING BUREAU
1905

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ONTARIO.

1 EDWARD VII., 1901.

4TH SESSION, 9TH LEGISLATURE.

Extract from a Report of the Hon. the Minister of Justice, dated 31st December, 1901, approved by His Excellency the Governor General in Council on the 25th January, 1902

These statutes were received by the Secretary of State for Canada on 25th April last. They may be left to the operation without comment, except the following:—

Chapter 21. 'An Act to amend the Ontario Insurance Act.'

There has been referred to the undersigned a communication from Mr. H. T. Beck, barrister, of Toronto, dated 1st June last, submitting a petition from James Henry Saunders Hoover, seeking disallowance of this Act upon grounds stated by Mr. Beck as follows: '(*a*) The first section is *ipso facto* null and void in so far as it enacts certain new provisions, and states that they were law from 14th April, 1892, when as a matter of fact they were never contained in the statute. (*b*) The Legislature has no jurisdiction to impair an existing contract which this Act attempts to do. The jurisdiction over "property and civil rights" does not give these powers. (*c*) The local Legislature has no jurisdiction to pass an Act affecting pending litigation. This is usurping the original and appellate jurisdiction of the courts. The policy of the British North America Act was to place the courts beyond the power of either Dominion or local jurisdiction, dividing the power of appointing the judges and the constitution and procedure of the courts between the two jurisdictions. (*d*) The legislation was improperly and collusively obtained at the instance of the Registrar of Friendly Societies who misled the local Legislature as to the objects of the retrospective clause and the effect of it.'

Copy of the petition is submitted herewith, as showing the facts and reasons upon which the petitioner [illegible]es. The undersigned also submits a memorandum of reasons for disallowance wh[illegible] has been received from Mr. Beck.

The undersigned caused to be sent to the Attorney General of Ontario a copy of these documents and of the other evidence submitted on behalf of the petitioner, and the Attorney General was asked for any observations which he might desire to make for the consideration of the undersigned in reporting upon the application. In reply the Attorney General sent to the undersigned copy of a memorandum prepared under his instructions by the Ontario Inspector of Insurance, and a copy of the certificate of the Master in Ordinary as to Mr. Hoover's claim. The Attorney General states that these documents in his view satisfactorily dispose of every question either of fact or law raised by Mr. Hoover or his counsel, and that it seems unnecessary to notice the very improper insinuations against the Inspector of Insurance. The memorandum of the Inspector of Insurance reviews the case in detail at considerable length supporting the legislation and the proceedings under it, but inasmuch as the undersigned has arrived at the conclusion that independently of this memorandum, Your Excellency's government ought not to interfere, he considers it unnecessary to submit the memorandum

It will be observed that the grounds urged on behalf of the petitioner do not affect the constitutional validity of the Act, nor do they point to any conflict between the statute and any matter of Dominion policy. It appears to be not unlikely that the legislation has interfered with pending proceedings and rights of contract, as they previously existed. A number of amendments are made to the Ontario Insurance Act by the first section, and it is declared that these shall be deemed and construed to declare the law of the province as the same existed and has existed since 14th April, 1893.

The undersigned conceives that Your Excellency's government is not concerned with the policy of this measure. It is no doubt *intra vires* of the Legislature, and if it be unfair or unjust or contrary to the principles which ought to govern in dealing with private rights, the constitutional recourse is to the Legislature, and the acts of the Legislature may be ultimately judged by the people. The undersigned does not consider, therefore, that Your Excellency ought to exercise the power of disallowance in such cases.

Chapter 30. 'An Act to amend the Municipal Drainage Act.'

There has been referred to the undersigned a letter from Mr. Douglas, K.C., of Chatham, in which he states that there are two clauses in this Act which the legislature has no power to pass, namely, section 1 and section 5, which limit the right of appeal to the Supreme Court. He says that under the Supreme Court Act there is express power in all cases to appeal where a tax or revenue is imposed, and that this amendment in effect overrules the Supreme Court Act. He claims that the present statute should, therefore, be disallowed. It will be observed that the first section provides merely that the order of the referee shall be subject to appeal to the Court of Appeal for Ontario, and that the decision of that court shall be final and conclusive as to all corporations affected thereby. The fifth section enacts that the decision of the referee in all applications and proceedings under the Act, not otherwise provided for as being final and conclusive between the parties, shall be subject to appeal to the Court of Appeal for Ontario, and that its decision thereon shall be final and conclusive and binding upon all parties to the application or other proceeding.

The undersigned considers that it is competent to a legislature to declare what the effect shall be of statutory proceedings authorized by the legislature. These sections appear to do no more. They cannot certainly affect, and are not expressed to affect, any proceedings or appeal competently authorized by parliament, and if the Supreme Court Act gives an appeal from the decisions in question, that right of appeal is not taken away by these provisions. If there be any question upon this point it may be fairly settled by the courts, and the undersigned does not consider it a case in which Your Excellency should interfere.

Chapter 37. 'An Act to amend the Ontario Fisheries Act, 1900.'

This Act was considered by the undersigned along with the Act which it amends, in his report approved by Your Excellency on 11th May last, and by executive minute of the Ontario government of 14th May last. Your Excellency's government was assured that at the first opportunity of so doing, the government would promote further amendments to these two Acts so as to remove the remaining provisions referred to in the report of the undersigned affecting the regulation of fisheries, and that in the meantime no regulations would be passed under either of these Acts to enforce the provisions of the sections objected to. In these circumstances the undersigned assumes that satisfactory amendments [illegible] be passed at the next session of the legislature, and it would not, therefore, be proper at present for Your Excellency's government to take any further action.

C. FITZPATRICK,
Minister of Justice.

Petition of J. H. S. Hoover to His Excellency the Governor General in Council.

To His Excellency the Right Honourable the Earl of Minto, G.C.M.G., &c., &c., Governor General of the Dominion of Canada, in Council:

The humble petition of James Henry Saunders Hoover, of the City of Toronto in the Province of Ontario, showeth as follows:—

1. The Merchants Life Association is an insurance corporation and a Friendly Society within the provisions of the Ontario Insurance Act and the said association is now being wound up in the office of the Master in Ordinary of the Supreme Court of Judicature for Ontario under an order made by the said master on the 17th day of April, 1900, pursuant to sections 183 (9) of the Ontario Insurance Act.

2. Your petitioner is the holder of a policy of insurance on his life for the sum of $1,000, payable upon his death, upon which all premiums were paid to the date of winding up order.

3. On or about the 19th day of April, 1901, an application was made on behalf of your petitioner before the said master in the winding up proceedings, for an order allowing the claim of your petitioner on the basis as directed by the Divisional Court on an appeal in the winding up proceedings by one Priscilla Catherine Vernon, another unmatured policy-holder, which application was by the said master dismissed, and your petitioner is now appealing therefrom.

4. Notice of your petitioner's application was served on the Registrar of Friendly Societies, and on the liquidator and receiver on the 13th day of April, 1901.

5. A certain Act was passed by the Legislative Assembly of the province of Ontario in the first year of the reign of His Majesty King Edward the Seventh, being chaptered 21, amending the Ontario Insurance Act as therein set forth, whereby, among other things, it is declared that the provisions of section One of the said Act are to be deemed and construed to declare the law of the said province on and from the 14th day of April, 1892.

6. By said section it is entered among other things that in a Friendly Society registered as such under the said Act, no unmatured policies shall create any liability against the estate of the society in a winding up under such Act.

7. Your petitioner further shows that the said amending Act operates to impair contracts, and is intended to operate to impair your petitioner's contract of insurance, and it is not only retrospective, but it is an attempt to usurp the functions of the High Court of Justice and the judges thereof, in litigation now pending before said court, and to reverse or nullify the judgment of the said court, instead of leaving parties affected thereby to appeal therefrom if dissatisfied, and that said amending Act is therefore unconstitutional and contrary to the policy of the British North America Act, 1867, and more especially to the provisions in said Act contained, whereby the provincial courts and judges thereof are not wholly within the jurisdiction and control of either the Dominion parliament or the local Legislature, and that the enactment is beyond the jurisdiction included in the words 'property and civil rights,' and that the said Act infringes upon the jurisdiction given to the Dominion parliament under the term 'Bankruptcy and Insolvency,' and that the amending Act is unconstitutional and void, in that it purports and attempts to declare that certain provisions therein contained were part of the statute law retrospectively to 14th April, 1892 when in fact these provisions did not appear in the statute.

8. Your petitioner shows that the said Act received its first reading on 1st April, 1901; its second reading on 4th April, 1901, and the Royal Assent on the 15th day of April, 1901.

9. Your petitioner further shows that the said amending Act was prepared by the Registrar of Friendly Societies without notice to your petitioner or his solicitor, and it was passed by the Legislature with undue haste and for the express purpose of defeating your petitioner's claim, and a large number of other similar claims, and that the Registrar of Friendly Societies obtained enlargements of appointments before the

Master on misrepresentation and fraud, so as to prevent the claim of your petitioner and others from being disposed of before the said Act was passed, and that the said enactment was passed by the Legislature in ignorance of its effect and through inadvertance.

10. Your petitioner prays that the said amending Act be declared null and void and be disallowed under provisions of section 90 of the British North America Act, 1867.

And your petitioner will ever pray.

J. W. McCULLOUGH.
Solicitor for J. H. S. Hoover.

Hoover Petition. Reasons for disallowance of Ontario Statute 1 Edward VII., Chapter 21.

Section 1 (6) of the Act attempts to make the previous subsections retrospectively declaratory of the law, thereby attempting to deal with the rights to parties now in litigation in the matter of the Merchants' Life Association.

I desire to refer to the following precedents:

Act passed by the Legislative Assembly of Prince Edward Island, entitled: 'An Act to amend the Land Purchase Act, 1875.'

Reserved Bill recommendation of Hon. R. W. Scott, K.C., Acting Minister of Justice, dated 18th June, 1876, 'That the Act do not receive the assent of the Governor General in Council. Adopted.'

Extract from recommendation: 'Without giving weight or consideration to any great extent to the allegations in the petition which are unsupported by actual proof, he is of opinion that the reserved Bill was retrospective in its effects, that it deals with rights of parties now in litigation under the Act which it is proposed to amend, or which may yet form the subject of litigation, and that there is an absence of any provision saving the rights and proceedings of persons whose properties have been dealt with under the Act of 1875.' (See Dominion and Prov. Legislation, compiled by W. E. Hodgins, p. 1176).

Ontario Act, passed 4th March, 1881, entitled: 'An Act for protecting public interests in rivers, streams and creeks,' disallowed by proclamation 19th May, 1881, on report of Hon. James MacDonald, K.C., Minister of Justice, dated 17th May, 1881.

Extract from report: 'The effect of the Act now under consideration must be to reverse the decision in this suit.' (Maclaren v. Caldwell). 'I think the power of the local Legislature to take away the rights of one man and vest them in another, as is done by this Act, is exceedingly doubtful, but assuming that such right does in strictness exist, I think it devolves on this government to see that such power is not exercised in flagrant violation of private rights and natural justice, especially when, as in this case, in addition to interfering with private rights in the way alluded to, the Act over-rides a decision of a court of competent jurisdiction by declaring retrospectively that the law always was and is different from that laid down by the court.' Reported. Dom. and Prov. Leg., Hodgins, p. 177.

See correspondence *re* application of Toronto Coal Company to disallow Nova Scotia Mining Act, Dom. & Prov. Leg. Hodgins, p. 616, Leg. Power in Canada, Lefroy p 199.

A legislature has no power to declare what was the intention of the statute passed at a former session.

Governor *v.* Porter 5 Humph. 165.
Postmaster Gen. *v.* Early 12 Wheat. 148.
Greenough *v.* Greenough 11 Pa. St. 489.
Reiser *v.* Toll Association 39 Pa. St. 137.
Sutherland Construction Statute, sections 200, 201.
Potter's Dwarris on Statutes (Ed. 1875), p. 68.

Potter's Dwarris p. 68. Note 1.—A declaratory statute, is sometimes intended to declare the meaning and intent of a pre-existing statute. This kind of legislation is apt to create a conflict between the proper functions of the legislative and judicial departments of the government; because such statutes are, necessarily, to a certain extent, retrospective. It assumes the exercise of judicial power, in determining what the law was before the declaratory statute was passed. In this way they exceed their power, and invade the domain of judicial authority. This kind of legislation sometimes happens after the courts in the due exercise of their legitimate authority, as interpreters of the law, have declared the meaning and intent of the statute to be otherwise than such as the new statute declares. Without referring to other cases a single instance may suffice. The legislature of New York in 1853 passed an Act in relation to the liability of certain insurance companies to taxation, the construction of which, was a question litigated and determined in the courts. In 1855, the legislature enacted a law declaring the intention of the Act of 1853, to be different from the intent as declared by the courts: such judicial decisions had been pronounced and were pending on appeal to the highest court, at the time of the enactment of the declaratory law. The Court of Appeals declared as follows: 'All the judgments of the Supreme Court now under review, were rendered at the special term before the enactment of this statute. The cases since that time have been pending on appeal before the general term, and in this court; and were so pending when the statute was enacted. As regards these cases, the mandate of the Legislature, if it has any application, must be regarded as addressed to the appellate tribunals. We habitually look with great respect upon all acts of the Legislature, and never refuse to give them effect, except where, upon the fullest consideration, we find that they conflict with the constitution. The Act in question, considered as a persuasive argument for a particular construction of the statute of 1853, loses much of its weight from the consideration that the legislative bodies had been renewed in the interval between the two enactments, and that but a few of the members of the Legislature of 1853 sat in that of 1855. But if that were otherwise, we should feel constrained to rely upon the language of the statute which we are called upon to interpret, rather than any personal assurance as to the intention of its members. The Acts of the Legislature do not rest in any respect upon oral tradition. They are committed to writing, and it is by the written language that their sense is to be ascertained. As an authorative mandate in favour of the construction claimed by the insurance company we cannot accord to it any force whatever. In the division of power among the great departments of the government, the duty of expounding written laws, has been committed to the judiciary. The Legislature has no judicial power; and cannot upon any pretence interpose its authority respecting questions of interpretation depending in the courts.' People *v.* Board of Supervisors of New York, 16 N.Y.R. 431, 2; Dash *v.* Van Kleeck, 7 John R. 477. Nor have the Legislature the power to make the opinion of the Attorney General binding upon a contractor, as agent of the state prison, upon a contract previously made. Young *v.* Beardsley, 11 Paige 93.

Note 2—Nor would a statute declaratory of the common law, retroact upon past controversies, or reverse decisions which the courts in the exercise of their undoubted authority have made. Cooley on Const. Lim. 94. This would be a like exercise of judicial power, which if tolerated, might constitute the Legislature a court of review in all cases where disappointed partisans could obtain a hearing, after being dissatisfied with the rulings of the court. Id.

The Legislature may within their legitimate powers, declare what the law shall be in future, but to declare what the law is, or has been, is the province of the judiciary. See Greenough *v.* Greenough, 11 Penn. St. R. 494, and Reiser *v.* Tell Association 39 Id. 137. In the latter case, the courts say in relation to such a declaratory act, 'It is the interpretation by one Legislature of a written statute by another, and therefore an adjudication of private rights that have arisen under it. And yet the former Legislature said nothing like this, and nothing from which it can be inferred. The Legislatures have no such authority over us, to change the laws of language. If

given language does not express a given meaning, they may give us other language that does; but this will not change the meaning of former language. In the very nature of language this is impossible. It is with, and by virtue of the new expressions, that we get the new meaning, and the meaning of the law is the law itself, and the law can be no older than the effectual expression of it.

Note 3.—A declaratory law, founded upon a mistaken opinion of the Legislature, though inoperative as to the past, may operate in the future. Postmaster General v. Early, 12 Wheat 148. A declaration of the Legislature as to what they intended for the time in the past by a law, does not make the law what they intended it, if they are in error. It only affects it in the future; the past law is to be determined by the judiciary; but it is the duty of the courts to give to a construing Act its intended practical operation, as far as is possible. Bassett v. U. S. Nott & Huntington R. 448. In this country, where the legislative power is limited, declaratory laws, so far as they operate on vested rights, cannot change the rule of construction as to a pre-existing law. Salters v. Tedias 3 Paige 288.'

It is submitted that the whole statute in question is void in that the provisions as to valueing unmatured policies tend to impair contracts, and are therefore beyond the provincial legislative power, and do not come within the provisions of section 92 of the British North America Act not being covered either by subsections 13 or 16, and that the policy of the British North America Act is that the powers given by section 90 were intended to be exercised in restraint of this species of legislation.

It is further submitted that the provisions relating to compulsory winding up infringe upon the Dominion parliament section 91 (21) British North America Act.

Reference may be made to Attorney General of Canada v. Attorney General of Ontario 20 O. R. p. 245. (19 A. R. 31, 23 S. C. 458). 'The power of disallowance is one which may operate both in the plane of political expediency and in that of judicial capacity. Its exercise in these days is largely confined to the former,' per Boyd C.

Bank of Toronto v. Lamb 12 App. Cases at 587.
Leprohon v. Ottawa 2 O. R. 522.
Re Thrasher I Bri. Col. Rpts. 153 (see post).

It is submitted also that weight should be given in favour of the application for disallowance, in that the Act was improperly hurried through the Legislature at the end of the session, without notice to parties interested in pending litigation, and at the instance of a government official who improperly concealed from the local government the fact that litigation was pending which might be affected thereby.

Sewell v. British Columbia Towing Co.
The 'Thrasher' Case 1 B. C. Reports 153.
3 Cartwright's Cases on British North America Act 320.
4 Can. L. T. 53.

HELD *per* BEGBIE, C. J. CREASE & YOUNG, J. J.

The appointment of the days on which the court should sit for reviewing *nisi prius* decisions, &c., is a matter of procedure and of purely judicial cognizance, and is not within the power of the local Legislature either to fix by positive enactment or to hand over to be fixed by any other person or persons, but belongs to the court itself.

The power conferred by section 92 British North America Act, 1867, is a legislative power and does not enable a local Legislature to interfere with functions essentially belonging to the judiciary or the executive.

H. T. BECK,
Counsel for the Petitioner.

Report of the Hon. the Minister of Justice upon Chapter 41 approved by His Excellency the Governor General in Council on the 13th March 1902.

DEPARTMENT OF JUSTICE, OTTAWA, 10th March, 1902.

To His Excellency the Governor General in Council:

There has been presented to the undersigned a petition of the corporation of the city of Toronto, addressed to Your Excellency in Council, praying upon grounds therein urged, for the disallowance of the Ontario statute, 1 Edward VII., chapter 41, intituled: 'An Act respecting the University of Toronto and University College.' Following the usual practice in such cases, the undersigned recommends that a copy of the petition herewith submitted, and of this report, if approved, be referred to the Lieutenant Governor of Ontario, for the observations of his government. It may be pointed out that the time for disallowance will expire on 25th April next, and that the reply of the provincial government should be sent forward as soon as convenient.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

Petition from the Corporation of the City of Toronto.

To His Excellency the Governor General of Canada, in Council:

The humble petition of the corporation of the city of Toronto, and of the inhabitants thereof,

HUMBLY SHOWETH AS FOLLOWS:

1. Your petitioners are advised by counsel learned in the law that the property in the city of Toronto known as 'Russell Square,' and recently occupied by Upper Canada College, on King street, in the city of Toronto, bounded by King, John, Adelaide and Simcoe streets, is the property held by His Majesty subject to an easement in favour of the inhabitants of the city of Toronto as a public square.

2. By section 6 of an Act passed by the Legislature of the province of Ontario in the first year of the reign of His Majesty, and chaptered 41, the said property was vested in certain trustees in the said Act made a body corporate for the purposes of the University and University College, subject to the provisions of the said Act. The said section reads as follows:—

> '6. All property and effects real and personal now vested in the Crown in trust for the purposes of the University and University College, and all other property and effects now owned by or held in trust for the University or University College, or either of them, or to which the University or University College is entitled, and the property in the city of Toronto forming the block of land lying between King, Adelaide, Simcoe and John streets, and being the former site of Upper Canada College, shall be, and they are hereby vested in the trustees for the purposes of the University and University College, subject to the provisions of this Act.'

3. The mayor and corporation of the said city have been advised by counsel for the said city that, notwithstanding the said Act, by the true construction thereof, the inhabitants of the said city are still lawfully entitled to the benefit of and easements over the said Russell Square as a public square.

4. The said square was in the year 1798 dedicated by the Crown as a public square upon the plan of the town of York, as then laid out upon the Crown lands, and the

name and designation of Russell Square appeared on the said plan upon the said square.

5. In and by the same plan the lots surrounding the said square were described as fronting upon and bounded by posts planted upon the limits of the said Russell Square. The said plan was duly published as the plan of the second or westerly extension of the town of York, and the said lots were granted and patented as so fronting on the said square: and the remaining lots shown upon the said plan were sold and granted according to the said plan and upon the faith thereof.

6. After the publication of the said plan and the sale and granting of the lots laid out thereon, namely, in the year 1819 the Governor in Council caused the portion of the said square not required for streets, to be patented to trustees under the name and designation of Russell Square, upon trust to observe such directions and to consent to and allow such dispositions as the Governor in Council should, from time to time order to make, pursuant to the purposes for which the said Russell Square was so originally reserved.

7. By direction of the Lieutenant Governor in Council pursuant to the said trust, and by and with the consent of the inhabitants of the said town of York, in the year 1829, the buildings of the Royal Grammar School (known as Upper Canada College) were directed to be and were placed on a part of the said Russell Square 'for the greater convenience of the youth of the said town of York,' and the remainder of the said square has, by like consent, been used as a play-ground for the youth of the town, and as open ornamental grounds, maintained in connection therewith, and as an ornament of the said town and city, and open to the view and accessible to the inhabitants thereof.

8. The said square was not then or at any time vested in the corporation of the said college; but the regulation and use thereof, and the control and disposition thereof, always continued subject to the order and disposition of the Governor in Council pursuant to the said trust, and have always been subject to the said easement in favour of the inhabitants of the said town and city.

9. It was afterwards enacted by Act of the Parliament of Canada (12 Victoria, cap. 35, section 33; now revised statutes Ontario, 1887, c. 181, s. 20) that in any city, town or village in Upper Canada which had been surveyed by the authority of the executive government, all allowances for roads of such city, town or village, should be and were thereby declared to be public highways and commons; and that the posts or ornaments planted to designate the same should be the true unalterable boundaries of such streets and commons.

10. It was enacted also by the said Parliament in the same session (now sections 557 and 637 of the Municipal Act, 1897) that the municipality of each village, town and city should have power and authority to pass by-laws for opening, improving and preserving such highways and squares, and for preventing the encumbering, injuring or fouling of the same.

11. Under an Act of the Legislature of the province in that behalf the said Upper Canada College has been removed from the said square to a new site outside of the limits of the said city, with a view to the said college becoming an institution of provincial more than local use and benefit; and the said Russell Square is now vacant and is no longer needed as a site for the said college for the use of the youth of the said city.

12. The mayor and council of the city of Toronto are advised by counsel for the said city that the inhabitants of the said city are entitled to have the said square applied for the benefit of the said inhabitants as a public square, pursuant to such by-laws as the said mayor and council may lawfully make in that behalf under the powers to them given in that behalf by the Municipal Act.

13. The said mayor and council are advised by counsel aforesaid that at the time of the passing of the Act known as the Confederation Act, the said lands, as to the power and disposition over the same reserved to the Governor in Council, were lands

held in trust by the province of Canada, and in which others than the province had an interest; and that in and by the Confederation Act the same were vested in Her late Majesty Queen Victoria on behalf of the province of Ontario, subject to the said trusts for, and interests of, the inhabitants of the said city of Toronto.

14. The said Act of the Legislature of Ontario, 1 Edward VII., chapter 41, may be sought to be acted on, in breach of the said trusts and may injuriously affect the rights and interests of a large number of Her Majesty's subjects without their consent, contrary to the true intent of the said Confederation Act and to Revised Statutes of Canada, 1897, chapter 181, section 20, and to the Municipal Act, sections 557 and 637.

15. Since the passing of the said last mentioned Act, the trustees of the University have sold, or have attempted to sell, part of the land formerly belonging to Russell Square, and your petitioners submit that the sixth section of the said Act should be disallowed at the earliest possible moment, so that other persons may not be induced to buy any of the said lands, believing the trustees had a right to sell, when, as in fact your petitioners submit, no title was vested in the said trustees and their title is defective.

16. The said last mentioned Act was assented to upon the 15th day of April, 1901, and your petitioners ask that the said section be disallowed before the expiration of one year from the said date.

Your petitioners therefore humbly pray:

That Your Excellency in Council will be graciously pleased to take into consideration the above matters, and to disallow the said Act passed by the Legislature of the province of Ontario in the first year of the reign of His Majesty King Edward the Seventh and chaptered 41, or so much of it, as vests in the trustees of the University of Toronto the land known as Russell Square, and described in the first paragraph of this petition. And your petitioners as in duty bound will ever pray.

Signed on behalf of the corporation of the city of Toronto.

OLIVER A. HOWLAND,
Mayor.

[L.S.]

W. A. LITTLEJOHN,
City Clerk.

R. F. COADY,
City Treasurer.

ONTARIO.

2 EDWARD VII., 1902.

5TH SESSION, 9TH LEGISLATURE.

Extract from a Report of the Honourable the Minister of Justice, dated 24th November, 1902, approved by His Excellency the Governor General in Council on 12th December, 1902.

These Acts were received by the Secretary of State for Canada on 21st March last.

A petition has been presented to Your Excellency in Council on behalf of Edward Spencer Jenison and others, seeking disallowance of chapter 42, intituled 'An Act respecting the Town of Fort William, 1902.' Copy of the petition has been communicated to the Government of Ontario, and the undersigned has heard representations on behalf of the petitioners urging the disallowance of the Act. No reply to the allegations of the petition has been received from Ontario, but the undersigned is informed that at present the petitioners are not desirous of having the matter further considered. This statute is, therefore, reserved for further report if necessary.

Chapter 101. 'An Act to incorporate "The Huronian Company, Limited."'

Section 5, paragraph (*e*), purports to authorize the company to construct, acquire, navigate and employ steam and other vessels for the purpose of transporting the produce of its mills, mines and works to any place in Canada or elsewhere. The authority of a provincial Legislature in such matters is defined and limited by the 10th enumeration of section 92 of the British North America Act, which only confers exclusive authority upon a provincial Legislature with regard to local works and undertakings other than

(*a*) Lines of steam or other ships, railways, canals, telegraphs and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province;

(*b*) Lines of steam ships between the province and any British or foreign country;

(*c*) Such works as, although wholly situate within the province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada, or for the advantage of two or more of the provinces.

The authority assumed by paragraph (*e*) of section 5 to navigate and employ steam vessels for the purpose of transporting goods to any place in Canada beyond the limits of Ontario or elsewhere seems, therefore, to be in excess of that which is conferred by the Act of Union, and the undersigned recommends a suggestion to the Lieutenant Governor that the statute be amended at the next session of the Legislature by expressly limiting the powers of the company to provincial objects.

Chapter 103. 'An Act to authorize "The Royal Trust Company to do business in the province of Ontario"'.

This Act recites that the Royal Trust Company has by its petition represented that it was incorporated by an Act of the Legislature of the province of Quebec, 55 and 56 Victoria, chapter 79, which Act has been since several times amended by the same Legislature, and that the company has prayed for an Act authorizing it to transact only the business of a trust company in the province of Ontario in conformity to the public

general law thereof. It is therefore enacted among other things, that after giving security to the satisfaction of the Lieutenant Governor of Ontario in Council in a sum of not less than $200, the company shall upon filing with the registrar appointed under the Loan Corporations Act the power of attorney required by section 108 of the last-mentioned Act, and upon being registered under the said Act, be authorized and empowered to carry on and exercise in the province of Ontario, the business of a trust company with the powers set forth in the schedule to the Ontario Trust Companies Act.

The undersigned observes that a provincial Legislature has exclusive authority with regard to the incorporation of companies with provincial objects, and it was doubtless in the execution of this power that the Royal Trust Company was incorporated as recited in the preamble by the Legislature of Quebec. If, therefore, the company exists for the provincial objects of Quebec, it is in the opinion of the undersigned questionable whether the Legislature of Ontario has any authority to extend these, or confer powers extra-provincial as to Quebec, or in any wise interfere with the constitution of the company. It has been held by the highest authority that the Dominion Parliament alone has jurisdiction to incorporate a company with objects extending to more than one province, and it may, therefore, be that where an existing provincial company desires to extend its franchise to other provinces, it should come to Parliament for the necessary amendment of its constitution.

For these and other like reasons the undersigned questions the authority of Ontario to enact the statute under consideration, but as such objections may be conveniently determined by the courts, and as there is perhaps room consistently with what has been decided, to uphold this Act, the undersigned does not recommend disallowance. He, however, submits these remarks for the consideration of the Government of Ontario and of the company concerned.

The remaining statutes may be left to their operation without comment.

C. FITZPATRICK,
Minister of Justice.

Report of the Hon. the Minister of Justice upon chapter 49, approved by His Excellency the Governor General in Council on the 20th May, 1902.

DEPARTMENT OF JUSTICE, OTTAWA, 30th April, 1902.

To His Excellency the Governor General in Council:

There has been referred to the undersigned a petition addressed to Your Excellency in Council from Edward Spencer Jenison and others, dated 23rd instant, 1902, praying for the disallowance of an Act of the Legislative Assembly of the province of Ontario, passed at the last session thereof, 2 Edward VII., chapter 49, intituled: 'An Act respecting the Town of Fort William, 1902.'

The undersigned is informed by the solicitor of the petitioners that he has forwarded a copy of this petition to the Attorney General of Ontario.

The undersigned is also informed that the consideration of the said petition is urgent owing to works of the petitioners which are in contemplation and which have to be executed within a limited time.

The undersigned recommends, therefore, that the Lieutenant Governor of Ontario be requested to submit for the information of Your Excellency's Government such observations as he may be advised in reply to the said petition.

Humbly submitted,

C. FITZPATRICK.
Minister of Justice.

Petition from E. S. Jenison, and others to His Excellency the Governor General in Council.

The Right Honourable the Earl of Minto, G.C.M.G., Governor General of Canada, in Council.

The petition of Edward Spencer Jenison, Shea Smith, George H. Jenkins and David Spencer Wegg all of the city of Chicago in the state of Illinois, one of the United States of America, humbly sheweth:

1. By an Act of the Legislative Assembly of the province of Ontario passed on the 13th day of April, 1897, and being chapter 106 of the statutes, 60 Victoria, authority was given to your petitioner Edward Spencer Jenison to erect a dam or weir in the Kaministiquia river in the district of Thunder bay at the head of the falls or rapids in the said river known as Ecarte Falls, to such height as might be necessary in order to raise the level of the water in the said river to the height of eight feet above its low water mark or level. The site for the said dam is at a distance of about 16 miles in a direct line from the town of Fort William in the said district

2. By the same Act authority was similarly given to the said Edward Spencer Jenison at a point above the said dam to be so erected, to divert from the channel of the said river such part of the waters thereof as might from time to time exceed 4,000 cubic feet, passing the said point per minute, and to convey and conduct by artificial means the waters so diverted across certain lands in the said Act mentioned, and to return such water to the natural channel of the said river at a point below the said rapids, and below a high natural fall in the said river known as the Kakebeka falls.

3. By the said statute other valuable powers and authority were further conferred upon the said Jenison enabling him to lower the bed of the said river at its source, to erect and maintain storage reservoirs at the head waters of the said river and of its principal tributary, to flood and keep submerged certain ungranted lands of the Crown, to transmit and convey electrical power along public highways in the said district and, under certain circumstances and restrictions in the said statute described to expropriate and acquire from the owners thereof certain lands in the said Act mentioned.

4. Prior to the passing of the said statute the said Edward Spencer Jenison had become by purchase, owner of a valuable undeveloped water privilege upon the said Kaministiquia river at or adjoining the said Ecarte rapids and for the purpose of improving and rendering more valuable the said water privilege, the said Jenison had by his petition prayed the said Legislative Assembly to pass the said Acts, as conducive to the public good and as proper and just under all the circumstances of the case.

5. The said Jenison had also prior to the passing of the said Act on or about the 21st day of April, 1896, entered into an agreement and contract with the Commissioner of Crown Lands for the province of Ontario, representing the Government of the said province, whereby license to use or flood certain ungranted lands of the Crown in the said agreement described was granted to the said Jenison upon the terms and conditions in the said contract or agreement set forth.

6. Prior to the making of the said agreement or contract the said Jenison at the instance of the Government of the province of Ontario, had obtained a report to be made by Mr. Hume Blake Proudfoot, O.L.S., in respect of the lands which would or might be flooded or otherwise affected by the proposed works, and the said Proudfoot in order so to report had made a personal survey and examination of the shores and levels of the lakes and rivers from which the waters of the Kaministiquia river flow—the expenses of such survey, examination and report by the said Proudfoot amounting to $600 were paid by the said Jenison.

7. The said Jenison, who is himself a hydraulic and civil engineer, had also, from the month of October, 1895, devoted the whole of his time and a very considerable outlay of money to personal surveys and examinations of the said Kaministiquia river and the adjacent country, to the employing and superintending the work of other

engineers, surveyors and assistants to the same end, to journeys and negotiations, with a view to acquiring the lands and rights necessary to the carrying out of his enterprise, and to the purchase, by private contract with the owners, of such of the said lands and rights as he was able so to acquire, and prior to his application to the Legislature for the passing of the said Act, there had been actually expended and paid out in connection with in and about the said undertaking a sum exceeding $10,000 [illegible].

8. The moneys so expended had been furnished by your petitioners Jenison, Smith and Jenkins under an agreement among themselves, and without any assistance up to the time of the passing of the said Act from your petitioner Wegg, but upon the passing of the said Act the matter of the said enterprise and of the rights, privileges and franchises conferred by the said statute was laid before the said Wegg and after inquiry and investigation on his part, an agreement was finally entered into on or about the 28th day of September, 1897, to which your petitioners above named alone are parties, and by which upon the terms as among themselves in the said agreement set out, your petitioners undertook to co-operate with each other in the effort to carry the said enterprise to a successful issue as a commercial undertaking.

9. It was essential to the carrying out of the scheme contemplated by the said statute that a strip of land across the mining location of lot No. 10X in the township of Oliver mentioned in the said statute, sufficient in width to admit the passage of the said diverted waters, should be acquired by your petitioners.

10. The said lot was owned by the Kakabeka Falls Land and Electric Company, Limited, a company which had been incorporated by letters patent of the province of Ontario dated the 7th day of March, 1890, and which company refused to part with any of its said land to the said Jenison, except upon terms altogether exorbitant in character.

11. Thereupon arbitration proceedings under the provisions of the said statute were entered upon between the said Jenison and the said company. Such proceedings began on the 11th day of October, 1897, and after a prolonged contest involving the examination and hearing of a very large number of witnesses, many of them giving scientific or expert testimony, the said proceedings resulted in an award dated the 24th day of June, 1898, by which it was ordered and determined that the said Jenison was entitled to enter upon, take possession of, acquire, hold use and expropriate a strip of land in the said award described being 100 feet in width across the said lot No. 10, paying therefor by way of compensation and damages the sum of $1,390.

12. The said Jenison was further required by the said award to pay the arbitrators' and stenographers' fees in connection with the said arbitration proceedings and his own costs of the said proceedings, and the said fees have been paid, and the amount so awarded to the said company ($1,390) has been paid to its solicitors.

13. The said company contested the rulings of the said arbitrator in the courts of Ontario and litigated such contestation until the Court of Appeal for Ontario pronounced judgment sustaining the course taken by the said arbitrator in arriving at his said award.

14. During the latter part of the year 1898 proposals for the establishment of a system or systems of water-works and for the furnishing of a supply of water for domestic and municipal purposes to the inhabitants of the towns of Port Arthur and Fort William began to be considered and discussed among citizens of the said towns and on the 2nd day of January, 1899, by-laws were submitted to the vote of the electors of the said towns respectively, authorizing the mayor and town clerk of each municipality to enter into a contract with the said Jenison for the supply of water as above mentioned and for the supply of electric power or energy to operate the lighting and heating systems of the said respective municipal corporations and an electric railway which connects the two towns.

15. The said by-laws each received the assent of the electors by large majorities and pursuant thereto a formal contract was, in the case of the town of Fort William, executed by the said Jenison and by the mayor and clerk of the said town.

16. The proposal so to supply water as well as electric power to the said towns necessitated the conducting of the diverted waters of the Kaministiquia river to a reservoir much nearer to the said towns than the site of the said Kakabeka Falls and of the water power at or above the same acquired by the said Jenison as above mentioned and the greater part of the year 1898 was occupied in surveys and examinations of the intervening ground, to make certain that such proposal was practicable and in the necessary negotiations with the municipal authorities of the said towns in and about the passing of the said by-laws and the making of the said contracts.

17. At the session of the Legislative Assembly of the province of Ontario holden in the year 1899 an Act (62 Victoria, Chapter 120) was passed upon the further petition of the said Jenison to extend the provisions of the former statute 60 Victoria, chapter 106.

18. By the said statute, 62 Victoria, chapter 120, it is recited that if the waters to [illegible] above mentioned diverted from the Kaministiquia river are conducted to a point in the township of McIntyre in the district of Thunder Bay near the said towns of Port Arthur and Fort William, they can there be economically utilized to provide a gravitation system of water supply for the said towns, and can by reason of the greater head there obtainable be also utilized to greater advantage for the production of power.

19. By the said statute authority is given so to convey the said diverted waters by means of a trench canal or otherwise as in the said statute set out, over intervening lands to the said towns of Fort William and Port Arthur and so to Thunder Bay, Lake Superior.

20. By the said statute other valuable powers and authority were further conferred upon the said Jenison enabling him to intercept and divert intervening streams and watercourses, to construct and maintain reservoirs and settling basins and to expropriate if necessary such lands as might be requisite for the reasonable and economical construction, maintenance and operation of the works proposed.

21. By the said statute the said by-laws of the towns of Fort William and Port Arthur were validated and confirmed, and power conferred upon the said municipalities to enter into the agreement therein referred to.

22. It is further provided by the said statute that the construction of the said works shall be commenced within a period of six months from the passing of the said Act and completed within three years from the time fixed as aforesaid for commencement, or within such further time as the Lieutenant Governor in Council might grant.

23. Within the said period of six months from the passing of the Act last mentioned the construction of the said works was actually commenced.

24. While the statute last mentioned was under consideration by the Private Bills Committee of the Legislative Assembly the propriety of conferring upon the said Jenison the powers of expropriation therein contained was questioned, and thereupon the said Jenison promised and undertook that in the event of such powers being conferred upon him by the Legislature, they should not be exercised unless in the last resort, and as a means of acquiring lands necessary for the said works which it might be impossible to purchase at any reasonable price by private contract.

25. In carrying out the said promise and understanding many journeys were necessarily undertaken and great expense incurred and much time occupied in the making of personal applications to land owners in different parts of Ontario and elsewhere to sell such lands, and in negotiations for such purpose, but ultimately during the years 1899, 1900 and 1901 all the lands requisite for the construction maintenance and operation of the said works were acquired either by purchase or private sale, or by means of proceedings for expropriation under the [illegible]vers in the said statute contained.

26. Much time was also occupied [illegible] the said years 1899, 1900 and 1901 and great expense incurred in further surv[illegible] and examinations by the said Jenison personally and by other engineers, surveyors and assistants working with him and under his employment and supervision in ascertaining and determining the [illegible]east expensive

and most efficient route by which to conduct the waters to be diverted as above described to the reservoir near the said towns where they were to be utilized as mentioned in the said Act.

27. During the summer of the year 1901 a force of about thirty men, with all necessary machinery, horses and plant was engaged in clearing lands preparatory to the construction of the said trench or canal until a strike took place among the said men, owing to dissatisfaction with the rate of wages they were receiving, and thereupon in consequence of the said difficulty, together with the refusal of the municipal authorities of the said town of Port Arthur to execute the contract above referred to, the said work of construction was suspended and has not since been resumed, although the intention to continue the same and fully to complete the said undertaking has never been in any way abandoned.

28. During the session of the Legislative Assembly of Ontario, in the year 1901, a statute was passed (1 Edward VII., c. 52, sec. 3) empowering the municipal council of the said town of Fort William to extend the time for the completion of the works referred to in the contract entered into by that municipality as above set forth to such time as the municipal council of the said town might determine, but the said council has refused to agree to any such extension.

29. The contract between the said Jenison and the town of Port Arthur has never been executed by the representatives of the said town, though every effort has been made by the said Jenison to procure the said contract to be so executed.

30. During the said session of the Legislative Assembly of Ontario, in the year 1901, a further statute was passed (1 Edward VII., c. 65, sec. 8) by which the municipal council of the said town of Port Arthur was empowered, on signing and delivering the agreement above referred to, to extend the time for the completion of the works therein specified to such date not later than 1st January, 1903, as the said municipal council might think proper.

31. The whole of the work of preliminary surveys necessary for the construction and operation of the said works has been completed, and all the requisite lands, rights and easements have been acquired, and all the necessary work of examinations, gaugings and measurements to determine the quantity and characteristics of the water-flow in the said river has been done, but as the actual execution and completion of the construction of the said works would necessarily involve the expenditure of a large amount of money, your petitioners were desirous of obtaining capital for that purpose upon the security of the said property itself, and to that end entered into negotiations with men of large means, and on the 15th day of March, 1902, finally concluded such negotiations by which the supply of all moneys required for the completion of the said works was secured.

32. Your petitioners have, in and about the premises, actually laid out and expended a sum of more than $90,000 of their own moneys.

33. During the session of the Legislative Assembly of Ontario, in the year 1902, a statute has been passed (2 Edward VII., chapter 49) by section 23 of which statute all and every Act or Acts of the said Legislature conferring any right or privilege upon the said Edward Spencer Jenison is and are repealed.

34. It was the intention of your petitioners but for the passing of the said repealing Act to have proceeded actively during the coming summer with the construction of the works above described, and there would be no difficulty in completing the said works by the first day of October next, so as to have ready and available for use hydraulic capacity for at least ten thousand horse-power as required by the statute, 62 Victoria, chapter 120, section 16.

35. The said statute, 2 Edward VII., chapter 49, empowers the town of Fort William to develop at or near the Kakabeka Falls on the said Kaministiquia river, electrical energy to the extent of 10,000 horse-power, and to convey the said electrical power or energy to the said town, and to lease, sell and otherwise deal with such electrical power or energy with any person desiring same upon such terms as such corporation deems meet.

36. By section 25 of the said statute an agreement bearing date the 11th day of March, 1902, between the solicitors for the said town and the said The Kakabeka Falls Land and Electric Company, Limited, which is set forth in a schedule to the said Act, is declared to be valid and binding upon the said corporation and the said company.

37. The said Act was passed upon the petition of the said town of Fort William, and after advertisement of the application for the said Act in the Ontario *Gazette* and in a newspaper published in the said town of Fort William, but neither the said advertisement nor the said petition contain any reference to the statutes conferring the powers above mentioned upon the said Jenison, nor any intimation that the rights or property of your petitioners were intended to be taken away by the said proposed legislation.

38. The said statute as introduced and as read a first time in the Legislative Assembly aforesaid contained no reference to the said statutes conferring the powers aforesaid upon the said Jenison, and did not take away the rights or property of your petitioners secured to them by the said statutes.

39. In the petition for the said statute the statement is made that the contract between the said town of Fort William and the said Jenison referred to in the said Act of 62 Victoria, chapter 120 expired on the first day of January, 1902, by reason of the default of the said Jenison, and on similar statements being made before the said Private Bills Committee by those promoting the passage of the said Act (2 Edward VII., Chapter 49) your petitioner Jenison offered to deposit with the Treasurer of the province of Ontario, within ninety days from the passage of the said Act, the sum of $50,000 as security that the said works would be gone on with and prosecuted to the satisfaction of the Lieutenant Governor in Council, and clauses to that effect were framed to be inserted in the said Act, and the said Jenison understood that the said Committee then determined to have the operation of the said Act suspended until opportunity was afforded to make deposit as aforesaid of the said sum.

40. The said statute again came before the said Private Bills Committee for consideration on the twelfth day of March, 1902, and on that day the provision above referred to repealing all Acts by which any right or privilege had been conferred upon the said Jenison was inserted in the said statute by the said committee.

41. The said statute received its third reading by the said Legislative Assembly on the 15th day of March, 1902, and was finally assented to on the 17th day of March, 1902.

42. Your petitioner Jenison was in attendance before the said Private Bills Committee when the said statute was under consideration, and was present at the meeting of the said committee on the twelfth day of March, 1902, but although it had been a few days before intimated to him that the rights and powers conferred upon him by the said Acts of the Legislature now repealed might be interfered with or restricted by the said proposed legislation, he was not aware until the thirteenth day of March, 1902, after the said statute had been reported by the said Private Bills Committee and had received its second reading in the said Legislative Assembly, that it actually repealed the said former Acts of the said Legislature, and your petitioners other than the said Jenison had no notice or intimation whatever of the repealing provision of the said statute, until after the same had been finally passed by the said Legislature and the assent of the Lieutenant Governor had been given thereto.

43. By the said statute as finally passed, the right to create by storage dams or other necessary works, reservoirs at the head of the Shebandowan river and at the head of the Kaministiquia river is conferred upon the corporation of the town of Fort William, and the rights and privileges so conferred upon the said town are declared to supersede and have priority over those of the said Jenison.

44. By the agreement between the said town and the said Kakabeka Falls Land and Electric Company, Limited, printed as Schedule "C" to the said Act, the said town may transfer and assign to the said company its rights, properties, powers and privileges under the said legislation.

45. The said Act purports to provide compensation to the said Jenison for a small portion of the lands acquired as aforesaid for the purposes of the said undertaking, but the compensation so provided for is altogether inadequate and illusory, and the said statute affords to your petitioners no real compensation whatever, but merely a pretended and wholly fictitious compensation for the property and rights by the said Act taken from them.

Your petitioners therefore humbly submit that the above mentioned provisions of the Ontario statute, 2 Edward VII, chapter 19, are unjust and inequitable, and would greatly prejudice and injure your petitioners, and that the said provisions of the Act aforesaid ought not to be allowed to become law for the following among other reasons:

1. Because the said Act injuriously affects your petitioners in their property and existing rights, and your petitioners had no sufficient or reasonable notice and no public notice was given of the intention to pass such an Act, or that any legislation was intended materially affecting the interests of your petitioners.

2. Because the real object and effect of the said Act is to take from your petitioners their property rights and franchises and to transfer the same through medium of the said municipal corporation of Fort William to the business rivals and competitors of your petitioners, and no protection of the just rights and interests of your petitioners is contained in the said Act.

3. Because the rights and privileges conferred by the said repealed statutes upon your petitioner Jenison were lawfully granted to him by the said Legislative Assembly, and were approved by His Excellency in Council, and upon the faith thereof a very large amount of money, and much time and labour have been honestly expended by your petitioners and it would be wholly contrary to good faith and to the infallible justice of the Crown that your petitioners should be deprived of their said property and rights without consideration or compensation.

4. Because the said Act is contrary to the provisions of Magna Charta which declares that no man shall be disseized or put out of his freehold franchises or liberties, nor be outlawed or exiled or any otherwise destroyed, unless he be brought in to answer and prejudged of the same by due course of law.

5. Because the said legislation is illegal and unconstitutional and is a violation of the rights of property, and is unjust and not expedient in the public interest.

6. Because the injustice of the said Act to your petitioners is so flagrant that the consequences in deterring capitalists from investing money in any Canadian enterprise would make it unwise and unsafe in the public interest to permit such legislation to go into operation.

7. Because the said Act is unconstitutional, in that in detriment of vested rights, it assumes to deprive your petitioners of extensive and important privileges and franchises, without providing any compensation or any adequate compensation therefor.

Wherefore your petitioners humbly pray that your Excellency in Council will graciously be pleased to take the premises into your favorable consideration, and to disallow the said Act or so much of the provisions of the same as repeal the said former Acts of the Legislative Assembly aforesaid, and destroy the property, rights and franchises of your petitioners.

And as in duty bound your petitioners will ever humbly pray.

EDWARD SPENCER JENISON,
SHEA SMITH,
GEO. H. JENKINS,
D. S. WEGG,

Dated, the twenty-third day of April, 1902.

ONTARIO.

3 EDWARD VII., 1903.

1ST SESSION, 10TH LEGISLATURE.

Extract from a Report of the Honourable the Minister of Justice, dated 8th January, 1904, approved by His Excellency the Governor General in Council on the 23rd day of March, 1904.

3 Edward VII received by the Secretary of State for Canada on 31st July, 1903.

These Acts may be left to their operation without comment, except as to chapter 16, intituled: 'An Act to amend the Loan Corporations Act.'

The Loan Corporation's Act, as amended previously to the statute above mentioned, provided a penalty against any person, society or corporation assuming or using a name which includes any of the words *loan, mortgage, trusts, investment* or *guarantee* in conjunction or connection with any of the words *corporation, association* or *society*, or in conjunction or in connection with any similar collective term, and it is now by section 9 of the present Act proposed to extend this penalty, so as to apply to any person, society or corporation assuming or using any similar name, or any name or combination of names which is likely to deceive or mislead the public.

The undersigned has received correspondence objecting to the last amendment because of the difficulty of ascertaining what is a similar name within the meaning of the statute, and because the amendment relates to criminal law or the regulation of trade and commerce, and Your Excellency is asked for these reasons to disallow the Act.

The undersigned considers, however, although the Act may not be very free from objection to one or other of the grounds stated, that it is open for the courts, not only to interpret it, but to give effect to any objection touching its validity, and he, therefore, does not think that this Act, which contains a number of other amendments, to which no exception is taken, should be disallowed for the reasons urged.

And also chapter 19, intituled: 'The Consolidated Municipal Act, 1903.'

As to which the undersigned observes that by section 534 the municipal councils are authorized to make by-laws for certain purposes, including the taking and carrying of land within any municipality for the purpose of a drill shed or armoury for any militia or volunteer force having its headquarters in the municipality.

Under section 562 the municipal councils are also empowered to make by laws for regulating harbours, preventing the filling up or encumbering of harbours, erecting and maintaining necessary beacons, erecting and renting wharves, piers and docks in harbours and also floating elevators, derricks, cranes and other machinery suitable for loading, discharging or repairing vessels and regulating vessels, craft and rafts arriving in any harbour, imposing harbour dues, and for regulating and compelling the removal of wrecks, &c.

Further, by section 591, by-laws may be passed for aiding any regularly organized rifle association, or for adding to the sum paid during the period of annual or other authorized drill, or when on active service, to any enlisted member or members of any corps of active militia organized within such municipality, or for the purpose of military outfit or equipment of the members of such corps.

The subject of militia and defence, and navigation and shipping, having been by the British North America Act assigned to the exclusive legislative authority of Parlia

ment, and a Legislature having no power of taxation except for provincial, municipal or local purposes, the undersigned has very serious doubts as to the capacity of a local Legislature to enact such provisions as the foregoing. In case of a conflict upon these subjects between Dominion and provincial legislation there is, however, no doubt that the courts would uphold Dominion authority according to the constitution, and in the absence of such a conflict the undersigned does not consider that the provisions in question are so objectionable in substance as to require the disallowance of the Act, which, of course, in the main, deals with important matters within provincial jurisdiction.

Humbly submitted,
C. FITZPATRICK,
Minister of Justice.

Report of the Hon. the Minister of Justice upon Chapter 7, approved by His Excellency the Governor General in Council on the 27th June, 1904.

DEPARTMENT OF JUSTICE, OTTAWA, 20th June, 1904.

To His Excellency the Governor General in Council:

The undersigned has had his attention called to a provision in chapter 7 of the Ontario Statutes of 1903, entitled 'An Act to amend the Statute Law,' the full purport and effect of which escaped his notice when he recomended in his report of the 8th January last, that that Act, amongst others, should be left in its operation.

Section 53 of the Act amends section 18 of 'The Act respecting Licensing of Extra Provincial Corporations,' chapter 24 of 1900, by striking out the first three paragraphs of the said section and inserting in lieu thereof the words, 'There shall be paid to His Majesty for the public uses of Ontario by every corporation requiring a license under this Act, such fees as may from time to time be approved of by the Lieutenant Governor in Council.' The repealed paragraphs are those which prescribed the fees to be paid by, amongst other classes of companies, those incorporated by Act of the Parliament of Canada and authorized to carry on business in Ontario, such fees being generally $25 if the capital stock of the company did not exceed $100,000, and $50 if it did exceed that sum.

Your Excellency may remember that the predecessor of the undersigned, the late Mr. Mills, took exception to the Act of 1900 which is thus amended on several grounds, one of which was that the Legislature ought not to exact fees discriminating between the trading corporations established by Parliament and those established by provincial legislation; and that his objections being concurred in by Your Excellency in Council and communicated to the government of Ontario the Act was at the next following session so amended as to remove the objectionable features to some extent. The amending Act, however, did not do away with the discrimination between Dominion and provincial companies. This was pointed out by Mr. Mills to the provincial authorities, and on 3rd May, 1901, he reported to Your Excellency in Council that he had informed the Prime Minister of the province in effect that the Act should be further amended, so as either to exempt corporations created by Parliament from the requirement to procure provincial licenses, or to provide that the obligation to take out licenses and pay the license fees required under the Act should be imposed equally upon corporations created by the Dominion and those created by the Legislature of Ontario. The minister went on to state that he considered it impossible to admit, consistently with the general interests of Canada, the principle of interference with Dominion policy by discriminating taxation on the part of a province in a matter within Dominion jurisdiction, and that he apprehended that disallowance was the appropriate remedy in such a case. The provincial government had, however, by an amendment already made, gone a considerable way to remove some of the most serious objections to the Act, and he was encouraged to believe that it would at the first opportunity promote further legislation either to exempt Dominion cor-

porations from the statute, or to establish equality with regard to license fees and taxation as between Dominion and provincial companies. He considered, however, that Your Excellency's government should have a formal assurance of such an intention from the government at Toronto, and on his recommendation a copy of his report, approved by Your Excellency in Council, was transmitted to the Lieutenant Governor of Ontario with a request that he inform Your Excellency's government as to whether at the first opportunity for so doing, his government would promote further amendments to the Act in question as suggested in the report.

An order of the Lieutenant Governor in Council was thereupon passed (14th May, 1901) and communicated to Your Excellency's government, approving of a report of the Prime Minister of the province in which, after referring to Mr. Mills' report, he recommended that an Act of the Legislature under which a discrimination may be exercised against corporations having authority from the Dominion government should be so amended as to establish equality in regard 'to license fees and taxation between Dominion and provincial companies, as suggested by the minister, and that legislation to that effect should be introduced and carried through at the next session of the Legislature.

No such legislation was passed at the next session of the Legislature, and now by the section above quoted from chapter 7 of the statutes of 1903 the Act is made much more open to the objection taken by Mr. Mills in his report of 3rd May, 1901. The fees of $25 and $50 under the Act as it stood would probably be claimed by the province not to be unreasonably, considered merely as a charge in connection with the application for and the issue of the licenses, and they were perhaps not large enough to very grieviously burden the companies liable to pay them. Under the amended provisions it is obvious that the fees may be made so large as to constitute a real grievance to companies which have or may obtain Dominion charters, as well as a discrimination between Dominion and provincial companies highly objectionable on other grounds.

For the reasons stated the undersigned would think it his duty to recommend the disallowance of chapter 7 aforesaid unless the government of the province should undertake to promote at the next session of the Assembly, legislation of the character suggested in the report of his predecessor above referred to, that is to say, either exempting corporations created by Parliament from the requirement to procure licenses, or providing that the obligation to take out licenses and pay the license fees prescribed, shall be imposed equally upon Dominion and provincial corporations. The time for disallowance expires on the 31st July next, and there is not, therefore, a great deal of time left for consideration and negotiation, and the undersigned recommends that a copy of this report, if approved, be sent forthwith to the Lieutenant Governor of the province with the request that he inform Your Excellency at the earliest possible time whether his government will enter into such an undertaking.

C. FITZPATRICK,
Minister of Justice.

The Hon. the Administrator of the Government of Ontario to the Hon. the Secretary of State.

GOVERNMENT HOUSE, TORONTO, August 4th, 1904.

SIR,—Adverting to former correspondence upon the subject of the disallowance of chapter 7 of the Acts of the session of the Legislature of Ontario, 1903, being 'The Statute Law Amendment Act, 1903,' I have now the honour to inclose herewith, for the consideration of the Dominion government, a copy of an Order of my Executive Coun-

cil, approved of by me on the 2nd day of August instant, together with a copy of a report in the premises of the Honourable the Attorney General.

I have the honour to be, sir,
Your obedient servant,

CHARLES MOSS,
Administrator of the Government of Ontario.

Report of the Hon. the Attorney General of Ontario approved by the Hon. the Administrator in Council on the 2nd August, 1904.

To His Honour the Lieutenant Governor in Council:

The undersigned has had under consideration the report received from the Honourable the Minister of Justice, dated 20th June, 1904, approved by His Excellency the Governor General in Council on the 27th June, 1904, whereby it is recommended that under cert in cir umstances chapter 7 of the Acts of the session of the Legislature of Ontario for 1903, being the Statute Law Amendment Act, 1903, be disallowed.

The whole section of this Act with which fault is found, is section 53, which amends section 8 of the Act respecting the licensing of Extra Provincial Corporations, by striking out the first three paragraphs thereof, and schedules A and B thereto, inserting in lieu thereof the following words:—

> 'There shall be paid by every corporation requiring a license under this Act such fees as may from time to time be approved of by the Lieutenant Governor in Council.'

Disallowance is suggested unless the Government of the province shall undertake to promote at the next session of the Legislative Assembly, legislation either exempting corporations created by Parliament from the requirements to procure licenses, or providing that the obligation to take out licenses and pay the license fees prescribed shall be imposed equally upon Dominion and provincial corporations.

No complaint is made that under the provincial legislation unreasonable fees have been exacted in connection with applications by Dominion corporations for the issue of these licenses. But it is suggested that under the amendment of the session of 1903, section 53 of the Statutes Law Amendment Act, 1903, fees might be imposed of so large an amount as to constitute a real grievance to companies having Dominion charters, and that there might be objectionable discrimination between Dominion and Provincial companies.

The section in question is one of 63 sections of what has been known as the annual 'Omnibus' Act which usually contains a considerable number of miscellaneous amendments of the Provincial Statute Law, some of them of minor importance but not a few of very considerable importance; and it is undoubtedly the case that this particular section was not considered in connection with the despatch of the Honourable the Premier, dated 14th May, 1901, referred to in the report of the Minister of Justice. In fact the clause was added to the Bill in Committee of the Whole House and adopted, as presumably facilitating the practical administration of this particular branch of detail work of the Provincial Secretary's Department.

As has already been pointed out many other sections of the Act deal with matters of very great importance. They have been acted under, interests have been created and conditions have arisen which would be very seriously affected by disallowance of the entire Act, and the undersigned assumes that disallowance could not be confined to al portion of an Act. No discrimination has taken place under the section objected to, and there need be no apprehension that there will be any discrimination before the next session of the Legislature, when the undersigned is of opinion that this section should be repealed and legislation substituted in the shape of an Act specially dealing

with this subject and substantially complying with the terms of the despatch of 14th May, 1901, and the undersigned recommends that an undertaking be given to this effect.

The undersigned does not enter upon a discussion of the constitutional question. He dissents however from the view that the provinces may be controlled by the Dominion in regard to the exercise of the rights of raising revenue, by imposition of taxes or exaction of license fees. He also points out that Dominion companies constantly come to the provincial governments for authority to hold lands, an authority which under the decisions of the courts they do not possess.

The undersigned also refrains from calling attention to the anomalies constantly observed in connection with the concurrent exercise of powers by the Dominion and provinces in granting charters.

There should be some definition of companies chartered for Dominion, as distinguished from provincial objects. It should not be left to the whim of the applicant, who may say in his petition, no matter how entirely local or how strictly provincial his proposed company may be—that he seeks incorporation of a company with 'Dominion objects.' It is very much like the case of a short line of railway between two towns in the interior of the province being declared '*a work for the general benefit of Canada.*'

All of which is respectfully submitted.

J. M. GIBSON,
Attorney-General.

TORONTO, 25th July, 1904.

QUEBEC.

1ST SESSION 10TH LEGISLATURE.

1 EDWARD VII., 1901.

Report of the Hon. the Minister of Justice, approved by His Excellency the Governor General in Council on the 27th June, 1901.

DEPARTMENT OF JUSTICE, OTTAWA, 8th June, 1901.

To His Excellency the Governor General in Council:

There has been referred to the undersigned copy of a petition addressed to Your Excellency by the Honourable Guillaume Alphonse Nantel, of the city of Montreal, dated 4th ultimo, also copy of another petition addressed to Your Excellency from Charles Sweeney, Esquire, and other electors of the province of Quebec, in both of which the petitioners complain of an Act passed at the last session of the Legislature of Quebec, being chapter 7, intituled 'An Act to amend the Quebec Controverted Elections Act,' assented to on 28th March, 1901, and received by the Secretary of State for Canada on 17th April, 1901.

The petitioners pray for disallowance of the Act in question upon the grounds set forth in the petition, copies of which are submitted herewith.

The undersigned, considering the grounds alleged by the petitions, is of opinion that the legislation in question is intra vires and that being so, while not approving of the legislation, he apprehends that it is not a case in which Your Excellency should exercise the power of disallowance. He recommends, therefore, that the Act be left to its operation and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Quebec for the information of his government, and also to each of the petitioners.

Respectfully submitted,

R. W. SCOTT,
Acting Minister of Justice.

Extract from a Report of the Hon. the Minister of Justice, dated 31st December, 1901, approved by His Excellency the Governor General in Council on the 25th January, 1902.

These statutes were received by the Secretary of State for Canada on 17th April last.

Chapter 7. 'An Act to amend the Quebec Controverted Elections Act,' was the subject of a report to Your Excellency, dated 8th June last, by the then acting minister of Justice. The other statutes contained in this volume may be left to their operation without comment.

Humbly submitted,
C. FITZPATRICK,
Minister of Justice.

QUEBEC.

2ND SESSION, 10TH LEGISLATURE.

2 EDWARD VII., 1902.

Extract from a Report of the Honourable the Minister of Justice, dated 24th November, 1902, approved by His Excellency the Governor General in Council on the 12th December, 1902.

These Acts were received by the Secretary of State for Canada on 9th April las They may be left to their operation without comment.

Humbly submitted,
C. FITZPATRICK,
Minister of Justice.

QUEBEC.

3RD SESSION, 10TH LEGISLATURE.

3 EDWARD VII., 1903.

Extract from a Report of the Honourable the Minister of Justice, dated 8th January, 1904, approved by His Excellency the Governor General in Council on the 25th January, 1904.

3 Edward VII—received by the Secretary of State for Canada on 13th May, 1903.

The undersigned sees no occasion at present to comment upon any of those statutes, except chapter 48, intituled: 'An Act respecting the liquidation of non-commercial companies and corporations.'

This Act provides that non-commercial joint stock corporations or companies, which have ceased payment, may be placed in liquidation on the application of any unsecured creditor. Such legislation appears to the undersigned to partake of the quality of bankruptcy and insolvency, and is for that reason objectionable. It would, however, be convenient for the courts to give effect to this point if raised by parties concerned, and the undersigned does not consider it necessary therefore to recommend disallowance.

Humbly submitted,
C. FITZPATRICK,
Minister of Justice.

NOVA SCOTIA.

1 EDWARD VII., 1901.

4TH SESSION, 32ND GENERAL ASSEMBLY.

Extract from a report of the Honourable the Minister of Justice, dated 31st Decemb 1901, approved by His Excellency the Governor General in Council on the 25th January, 1902.

These statutes were received by the Secretary of State for Canada on July 8th la They may be left to their operation without comment.

Humbly submitted,
C. FITZPATRICK,
Minister of Justice.

NOVA SCOTIA.

2 EDWARD VII., 1902.

1ST SESSION, 33RD GENERAL ASSEMBLY.

t December,

uly 8th last.

Justice.

Extract from a report of the Honourable the Minister of Justice, dated 24th November, 1902, approved by His Excellency the Governor General in Council on 12th December, 1902.

These Acts were received by the Secretary of State for Canada on 11th August last. They may be left to their operation without comment except chapter 144, 'An Act to incorporate the Maritime-Newfoundland Shipping Company, Limited.'

The name of this company suggests the object of a shipping business with Newfoundland. Among the powers which the Act professes to confer on the company are included powers to build and purchase vessels, and to sell, operate and maintain vessels for the carriage or conveyance of passengers, goods, chattels, wares and merchandise; also to tow and otherwise move or assist vessels in distress or otherwise.

It will be observed that the power to carry out these objects is not expressly limited to Nova Scotia, and the undersigned considers, for reasons which have been already stated in this report with regard to an Ontario statute, and for reasons which have been frequently stated by the predecessors in office of the undersigned, that it is desirable to have this Act amended so as to confine the business of the company to the province of Nova Scotia, the Legislature having no jurisdiction to incorporate except for provincial objects.

The undersigned entertains no doubt that the Act as it stands would be construed subject to the limitation referred to, but as the terms used are general, he considers that it would be expedient to have an express limitation, and with that object he commends the statute to the further consideration of the Provincial Legislature.

C. FITZPATRICK,
Minister of Justice.

NOVA SCOTIA.

3 EDWARD VII., 1903.

2ND SESSION, 33RD GENERAL ASSEMBLY.

Extract from a report of the Honourable the Minister of Justice, dated 8th Januar 1904, approved by His Excellency the Governor General in Council on the 23rd day of March, 1904.

Chapter 174, intituled, 'An Act to incorporate the city of Sydney,' contains a pr vision, section 99, whereby all property vested in His Majesty for Imperial or Domi ion purposes is exempted from taxation, but it is provided that if such property occupied by any person otherwise than in an official capacity, the occupant shall assessed and rated in respect thereto, and that the exemption shall not extend to ar water rates, nor any special or extra water rate, levied under the authority of the Ac nor to any rate or special assessment for sewers, sidewalks, or for local improvement The Act, therefore, seems to intend that for certain purposes the local authorities sha be entitled to assess the property of His Majesty in His Imperial right, or in right the Dominion. Such a provision is manifestly *ultra vires*.

The question as to the validity of the provision that an occupant may be assess in respect of his occupation may be allowed to stand for such determination as t courts deem right, but the further provision subjecting Imperial or Dominion proper to taxation for special rates is manifestly *ultra vires*, and ought to be repealed. would, of course, be very inconvenient to disallow the whole Act on account of th one objection, and the undersigned recommends, therefore, that the attention of t Government of Nova Scotia be called to the matter, so that at the present session the Legislature they may repeal the proviso.

C. FITZPATRICK.
Minister of Justice.

The Hon. the Attorney General of Nova Scotia to the Hon. the Minister of Justi

HALIFAX, April 5th, 1904.

SIR,—I have just had submitted to me your report together with the report of Committee of the Privy Council in relation to the Acts passed during the year of 19 by the Legislature of Nova Scotia.

I note that the only Act to which objection is made, is that in respect of the inc poration of the City of Sydney.

I recognize that under the British North America Act the property of the Dom ion is not subject to taxation by the province, and in so far as Sydney's charter viola that provision of the Act, I have no difficulty in recommending that such portion repealed. The assessment of private occupants of Government property is one wh may or may not contravene section 125 of the British North America Act. So far the City of Halifax is concerned, I think an arrangement has been entered into betw the Provincial Government and the City of Halifax that the offices occupied in

Government building by the Canadian Pacific Telegraph and the Bermudas Cable Company shall contribute taxes at the usual rates to the city. It seems an equitable provision, otherwise, if any government building were occupied by private persons carrying on business, they would be placed at an unfair advantage over all competitors who paid taxes.

It will be recognized, I hope, by the Department of Justice, that it is difficult, if not impossible, for me, acting on behalf of the Government, to definitely speak for the Legislature in respect of an Act local in its character. I will say, however, that the Government will be prepared to use its influence and its best offices in securing such a modification of the objectionable clause as will render it not obnoxious to the provisions of the British North America Act.

I have, &c.,

J. W. LONGLEY,
Attorney General.

The Deputy Minister of Justice to the Hon. the Attorney General of Nova Scotia.

DEPARTMENT OF JUSTICE,
OTTAWA, April 15th, 1904.

SIR,—I am directed to acknowledge receipt of your letter of the 5th instant with regard to chapter 174 of the Nova Scotia Act, 1903, intituled 'An Act to incorporate the City of Sydney,' and I am to say that in view of your assurance that your Government will promote legislation at the next session to remove the objection affecting the taxation of Dominion property, the Minister will not recommend disallowance of the Act.

I have, &c.,

E. L. NEWCOMBE,
Deputy Minister of Justice.

NEW BRUNSWICK.

1 EDWARD VII., 1901.

3RD SESSION, 3RD LEGISLATIVE ASSEMBLY.

Report of the Hon. the Minister of Justice, dated the 31st December, 1901, app by His Excellency the Governor General in Council on the 25th January, 1902

These statutes were received by the Secretary of State for Canada on 13th No ber last. They do not call for my comment except as follows:—

Chapter 21. 'An Act to consolidate and amend chapter 14 of the Consolidated Sta relating to absconding and concealed and absent debtors.'

The undersigned is not satisfied that some of the provisions of this statute do affect the subject of bankruptcy and insolvency, but he considers that any doubt w may exist upon that question may be properly solved by the courts, and that the ought not to be disallowed.

Chapter 27. 'An Act in addition to and in amendment of, chapter 50 of the C solidated Statutes, intituled "The Court of Divorce and Matrimonial Causes" reserved for a separate report.

Chapter 36. 'An Act to provide for the Establishment of District Courts.'

This chapter provides that the Province of New Brunswick, with the exceptio the City of St. John, shall be divided into judicial districts, and that there shal hold in each district a court, to be called District Court, qualified by the name of city, town, parish or other district for which the court is established. Every such c is to be held before a commissioner, who shall be appointed by the Lieutenant Gove in Council. The jurisdiction of the court is limited to small cases not exceeding in matters of contract, and $40 in matters of tort. If these courts are districts co within the meaning of section 96 of the British North America Act, it is certain the statute is *ultra vires*, so far as it authorizes the Lieutenant Governor to appoint commissioners who are to preside as judges of the court. These courts appear, h ever, to be intended to take the place of the parish courts and magistrates courts, h ing limited civil jurisdiction, heretofore established, and they are not courts in opinion of the undersigned having the dignity of the district courts intended by British North America Act. He considers, therefore, that the statute ought not be disallowed.

C. FITZPATRICK.
Minister of Justice.

Report of the Honourable the Minister of Justice upon chapter 27, approved by H Excellency the Governor General in Council on the 17th January, 1902.

DEPARTMENT OF JUSTICE, OTTAWA, December 30th, 1901.

To His Excellency the Governor General in Council:

Referring to chapter 27 of the statutes of New Brunswick, 1 Edward VII., 19 intituled, 'An Act in addition to, and in amendment of chapter 50 of the Consolida

Statutes, intituled, "The Court of Divorce and Matrimonial Causes"', the undersigned has the honour to state that provision is made in the first section for a judge of the court disposing of cases pending in the time of his predecessor, the intention being apparently that the proceedings and evidence already taken shall be available and acted upon as the case matters as if they had been taken before the succeeding judge. This provision relates solely to the procedure of court, and although different views may be held as to the validity of such provincial legislation, having regard to the fact that the whole subject of divorce is mentioned as a matter for the exclusive legislative authority of Parliament, the undersigned considers that the procedure of the court is competent to a Legislature under one or other of the provincial enumerations, and he would, therefore, advise that this section, if it stood alone, should be left to its operation. The following section, however, provides that in the event of such newly appointed judge being disqualified to hear a case, for any reason, any other judge of the Supreme Court named by the judge so interested to act as judge of the Court of Divorce and Matrimonial Causes for the completion of such suit or matter, may proceed therewith, and in all respects, and with the same rights, and also the same rights to the parties as if he had been the duly appointed judge of the said court. This section plainly transgresses the exclusive authority of Your Excellency to appoint the judges of provincial courts. It is *ultra vires*, and affecting as it does the validity of proceedings and decrees relating to divorce, the undersigned considers that the statute must be disallowed unless section 2 be repealed within the time limited for disallowance.

The undersigned recommends that enquiry be made of the Lieutenant Governor of New Brunswick as to whether this section will be so repealed.

Respectfully submitted.

C. FITZPATRICK,
Minister of Justice.

Minute of Executive Council of the Province of New Brunswick, respecting Chapter 27.

The committee of the Executive Council have had under consideration a despatch from the Under Secretary of State for Canada, enclosing a Report of the Honourable the Minister of Justice in reference to Chapter 27 of the Statutes of New Brunswick, 1. Edward VII., 1901, intituled: "An Act in Addition to and in amendment of Chapter 50 of the Consolidated Statutes, intituled, "The Court of Divorce and Matrimonial Causes,"' in which the Minister states that, in his opinion, section 2 of the said Act is *ultra vires* of the Provincial Legislature, and recommends that enquiry be made of the Lieutenant Governor of New Brunswick as to whether this section will be repealed. The Committee have also had under consideration a report of the Committee of the Honourable the Privy Council of Canada, approved by His Excellency the Governor General on the 17th January, 1902, stating that the Committee of the Privy Council concur in the said report and advise a certified copy thereof and of the said report be transmitted to His Honour the Lieutenant Governor.

The Committee of Council, having considered the report of the Honourable the Minister of Justice and also the report of the Committee of the Honourable the Privy Council, are of opinion that it would be desirable to meet the views of the Minister of Justice in respect to section 2 of the said Act; and recommend that at the coming session of the Legislature a Bill should be submitted repealing the section in which objection is made.

The Committee of Council respectfully submit this minute for the approval of His Honour the Lieutenant Governor, and recommend that a copy be transmitted to the Secretary of State for Canada.

A. R. McCLELAN,
Lieutenant Governor, New Brunswick.

NEW BRUNSWICK.

2 EDWARD VII., 1902.

1ST SESSION, 3RD LEGISLATIVE ASSEMBLY.

Extract from a Report of the Honourable the Minister of Justice, dated 24th Novemb[illegible] 1902, [illegible] His Excellency the Governor General in Council, on 1[illegible]th Decem[illegible], 1902.

These statutes were received by the Secretary of State on 11th July last. T[illegible] only Acts which appear to call for comment are:

Chapter 101, 'An Act relating to the Royal Trust Company.'

This is the company affected by Chapter 103 of the Statutes of Ontario, [illegible] fore mentioned, and the legislation is subject to the same observations and [illegible] stated with regard to the Ontario statute.

Chapter 104, 'An Act to incorporate "The Moncton and Eastern Railway Co[illegible] pany."'

Chapter 105, 'An Act to incorporate "The Fredericton and Western Railw[illegible] Company."'

These Acts are subject to the objection which has been several times stated w[illegible] regard to similar provincial legislation, that it is incompetent to a province to auth[illegible]ize the construction and operation of a railway extending from a point within the pr[illegible]vince to a point upon the boundary line between that province and another province.

The undersigned, however, following previous practice in similar cases, does n[illegible] recommend the disallowance of these Acts.

C. FITZPATRICK,
Minister of Justice.

NEW BRUNSWICK.

EDWARD VII., 1903.

1st Session, 11th Legislative Assembly.

Extract from [illegible] 1903, approved by His Excellency the Governor General in Council, [illegible]

The Statutes were received by the Secretary of State for Canada on 13th August, 1903.

Chapter 73, intituled, "An Act to incorporate the Town of D[illegible], sewerage, fire, light and pol[illegible]."

Contains a provision, section 31, [illegible] amongst other purposes, to enforce the due observance of the Lord's Day, commonly called Sunday, and punish vice, immortality and indecency on the streets or other public places within the town.

This provision appears to affect the subject of criminal law, and may, for that reason, not be within the authority of the Legislature. The undersigned, however, does not on that account consider that the Act should be disallowed.

The undersigned further recommends that the remaining statutes, passed in the year 1903, be left to such operation as they may have.

Respectfully submitted,

C. FITZPATRICK.

Minister of Justice.

MANITOBA.

1 EDWARD VII., 1901.

2ND SESSION, 10TH LEGISLATURE.

Extract from a report of the Honourable the Minister of Justice, dated 31st Decem 1901, approved by His Excellency the Governor General in Council on the 25th January, 1902.

These Acts were received by the Secretary of State for Canada on 19th, 23rd 26th March, and 15th April last. They may be left to their operation without c ment, except Chapter 60, 'An Act respecting the Manitoba Central Railway Compa and Chapter 61, 'An Act respecting "The Morden and Northwestern Railway C pany."'

Each of these Acts incorporating railway companies with power to construct operate railways comm.ncing at a point on the international boundary, and are, th fore, subject to the objection which has been formerly stated, arising out of the inca city of a Legislature to authorize the construction of railways, which are not local wo which connect two provinces or extend beyond the limits of a province. Follow the practice heretofore pursued in such cases the undersigned does not on that acco recommend disallowance.

C. FITZPATRICK,
Minister of Justice.

MANITOBA.

2 EDWARD VII., 1902.

3RD SESSION, 10TH LEGISLATURE.

Extract from a report of the Honourable the Minister of Justice, dated 24th November, 1902, approved by His Excellency the Governor General in Council on 12th December, 1902.

These statutes were received by the Secretary of State for Canada on 29th April last, and may be left to their operation without comment except as follows:—

Chapter 43, "An Act respecting Real Property in the province of Manitoba."

In view of the provisions of section 64, which provides that sections 56 and 63 shall not be applicable to plans or surveys of lands belonging to His Majesty in the right of Canada, the undersigned considers that this Act may be left to its operation.

Chapter 44, "An Act respecting the prohibition of the sale of intoxicating liquors in Manitoba."

This Act has been the subject of special correspondence and report, and for the reasons therein stated was left to its operation.

Chapter 65. 'An Act to incorporate "The Occidental Fire Insurance Company"'.

Chapter 67. 'A[illegible] incorporate "The Prudential Life Insurance Company"'.

Chapter 70. 'A[illegible] incorporate "The Standard Trusts Company"'.

Chapter 73. 'An [illegible] to incorporate "The Universal Life Assurance and Annuity Company"'.

These Acts incorporating companies and defining their powers, do not expressly limit the business of the companies to the province of Manitoba. It is clear, as has been frequently stated, that the authority of a provincial Legislature in this respect does not extend beyond the incorporation of companies with provincial objects. These Acts must, of course, be construed as limited in their operation to purposes competent to the Legislature under its constituting authority, but it would, in the opinion of the undersigned, avoid misapprehension, if the Acts were expressly limited, and with this end in view the undersigned commends that the attention of the Government of Manitoba be directed to them so that the proper amendments may be made.

Chapter 68, 'An Act to authorize the Royal Trust Company to do business in the Province of Manitoba.'

Chapter 72. 'An Act respecting "The Toronto General Trusts Corporation.'

These Acts are subject to the observations already made with regard to the legislation of Ontario affecting the Royal Trust Company, and they may for the same reason be left to such operation as they may legally have.

C. FITZPATRICK,
Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 19th March, 19[illegible]

DEPARTMENT OF JUSTICE, OTTAWA, March 13th, 19[illegible]

To His Excellency the Governor General in Council:

There has been referred to the undersigned the petition of the Manitoba Br[illegible] of the Dominion Alliance, praying for the disallowance of the statute said to have passed at the recent session of the Legislature of Manitoba with reference to the [illegible]clamation of the Manitoba Liquor Act, and known as the Referendum Act, 1902. [illegible] copy of the Act in question has, however, been transmitted to Your Excellency's [illegible]ernment, and as it is said that the vetoing and repealing of the Act is to take place [illegible]nstant, it may be important that the matter should be considered without delay.

The undersigned submits herewith a copy of the petition in question and [illegible]mends that a copy of this report, [illegible] be transmitted to the Lieutenant Governor [illegible] Government, and such action thereon [illegible].

Respectfully submitted.

CHARLES [illegible]
Minister of Justice.

Petition of the Manitoba Branch of the Dominion Alliance to His Excellency the Governor General.

To His Excellency, The Right Honourable Sir Gilbert John Elliot, Earl of Minto, Governor General of Canada:

The humble petition of the undersigned [illegible]:

Whereas the Legislature of the Province of Manitoba, pursuant to a mandate of the people given at two plebiscites and to pledges given to the electors, passed the Act known as 'The Liquor Act,' and the same was duly assented to by Her late Majesty on the fifth day of July, A.D. 1900;

And whereas the Government of the Province of Manitoba did submit the question of the constitutionality of the Act to His Majesty's Privy Council, who gave judgment upholding the same;

And whereas under an amending Act duly assented to by His Majesty on the 2[illegible] March, 1901 (chap. 20 of 1 Edward VII) it was enacted that the said Liquor Act should come into force on proclamation of the Lieutenant Governor in Council;

And whereas in accordance with constitutional usage it was the duty of the Government of the Province of Manitoba to immediately advise His Honour the Lieutenant Governor of Manitoba in Council to cause the said Act to be proclaimed;

And whereas the Government of the Province of Manitoba has introduced a Bill for the purpose of holding a referendum and submitting to the vote of the electors of the Province of Manitoba the question of whether the said Liquor Act should be enforced or not;

Your petitioners therefore pray;

That Your Excellency will in His Majesty's name disallow and veto any Bill referring to the people in any manner the enforcement of the Liquor Act, on the ground that such a reference would be subversive of the principles of representative and responsible government, inasmuch as it would be contrary to the usage and repugnant

the spirit of the constitution, and, moreover, injurious to the dignity and prerogative of the Crown, if not also *ultra vires* of the British North America Act.

On behalf of and by order of the Manitoba Branch of the Dominion Alliance.

Dated 24th February, A.D. 1902.

W. R. MULOCK,
President.

J. [illegible]
[illegible]

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the [illegible] 1902.

DEPARTMENT OF JUSTICE, OTTAWA, [illegible] 1902.

To His Excellency the Governor General in Council.

The undersigned has had under consideration a statute of the Legislative Assembly of the Province of Manitoba, intituled 'An Act respecting the Prohibition of the Sale of Intoxicating Liquors in Manitoba,' 2 Edward VII., chapter 29, assented to on 1st March, 1902, and received by the Secretary of State [illegible]

This Act is cited as 'The Referendum Act, 1902.' [illegible] the votes of the electors of the province the question 'Are you in favour of bringing *the liquor Act* into force on the 1st day of June, 1902?' [illegible] Executive Council, who is [illegible] in the next issue of the Manitoba *Gazette*, and [illegible] that in case it shall appear [illegible] that forty-five per cent of the [illegible] number of votes, [illegible] by the act, have given affirmative answers to the question, [illegible] electors have voted at the election, and that at least sixty per [illegible] so voted have given affirmative answers to the question, or that at least sixty-two and a half per cent of all the electors who have voted on the question have given affirmative answers thereto, the Lieutenant Governor in Council shall immediately after the expiration of thirty days from the publication of such certificate issue a proclamation bringing *the liquor Act* into force throughout the province, upon, from and after 1st June, 1902, and that thereupon the liquor Act shall accordingly come into and be in force upon, from and after the last mentioned date, and it is provided further that in case no one of the three results above mentioned shall be shown by the certificate of the clerk of the Executive Council, the Lieutenant Governor in Council shall at any time after publication thereof issue a proclamation repealing the liquor Act, and upon, from and after the date of the publication of such proclamation, the liquor Act shall be wholly repealed.

The liquor Act so referred to is chapter 22 of 63-64 Victoria, and it was according to its terms to have come into force on 1st June, 1901. The validity of the Act was, however, contested in the courts, and pending these proceedings an amending Act, 1 Edward VII, chapter 20, was passed, by which it was provided in effect that the liquor Act should not come into force as originally provided, but upon proclamation of the Lieutenant Governor in Council. Subsequently by a decision of the Judicial Committee of the Privy Council *the liquor Act* was upheld, and now by the Referendum Act, 1902, the conditions, subject to which *the liquor Act* is to come into force or be repealed, are established as already briefly indicated.

Previous to the Referendum Act, 1902, receiving the assent of the Lieutenant Governor, and while it was before the Legislature, there was referred to the undersigned a petition addressed to Your Excellency, dated 24th February, last, on behalf of the Men total branch of the Dominion Alliance. The petition recites that the Legislature pursuant to the mandate of the people given at two plebiscites, and pursuant to pledges given to the electors, had passed the Liquor Act; the Government of the province had submitted the constitutionality of the Act to His Majesty's Privy Council who gave judgment upholding the same; that by the amending Act of I Edward VII., already mentioned, it had been enacted that the Liquor Act should come into force upon proclamation of the Lieutenant Governor in Council; that in accordance with constitutional usage it was the duty of the provincial Government to immediately advise the Lieutenant Governor to cause the Act to be proclaimed; that the Government had, however, introduced a Bill for the purpose of holding a referendum and submitting to the vote of the electors of the province the question as to whether or not the Liquor Act should be enforced, and the petitioners thereupon pray that Your Excellency will disallow and veto any Bill referring to the people in any manner the enforcement of the Liquor Act, upon the ground that such a reference would be subversive of the principles or representative and responsible government, inasmuch as it would be contrary to the usage and repugnant to the spirit of the constitution, and moreover injurious to the dignity and prerogative of the Crown, if not also *intra vires* of the British North America Act.

This petition has been supported by several letters from Mr. W. R. Mulock, barrister, of Winnipeg, acting on behalf of the petitioners, and Mr. Mulock has also submitted a document which he styles 'The case for the petitioners,' in which the grounds stated in the petition are somewhat elaborated, and in which he quotes at considerable length, as supporting the application, various United States and state decisions.

By a minute of Your Excellency in Council of 14th ultimo, upon the recommendation of the undersigned, it was stated that the aforesaid petition had been received, but that no copy of the Act had been transmitted to Your Excellency's Government; that it was said that the voting under the Act would take place on March 22, 1902, and that it might, therefore, be important that the matter should be considered without delay, and it was accordingly directed that a copy of the petition should be transmitted to the Lieutenant Governor of the province for the information of his Government, and such action thereon as he might be advised. Copies of this minute of Council and of the petition were accordingly transmitted to the Lieutenant Governor, and he has replied under date 27th ultimo, transmitting copy of letter addressed to the Lieutenant Governor by the Provincial Secretary, containing the observations of his Government upon the application for disallowance. Copy of the said despatch of 27th ultimo is submitted herewith.

The validity of the Liquor Act was never questioned by Your Excellency's Government, and it has been held by the highest judicial authority to be *intra vires* of the Legislature. That being so there can be no doubt that your Excellency cannot consistently disallow any subsequent Act of the Legislative Assembly suspending or repealing the Liquor Act, or providing as to the time of its coming into operation upon any objection to the constitutional authority of the province to so legislate, and it is clear that Your Excellency's Government is not responsible for, and cannot properly interfere with the policy of such legislation. It is said, as already stated, however, that the project of submitting the question as to whether the Liquor Act shall be brought into force by popular vote, and providing for the enforcement or repeal of the Act according to the result of such vote, is subversive of the principles of representative and responsible government, inasmuch as it would be contrary to the usage and repugnant to the spirit of the constitution, and moreover, injurious to the dignity and prerogative of the Crown.

The undersigned has failed to discover any grounds for these assertions. The Provincial Legislature, acting as it undoubtedly has done in the circumstances, within the

limit of the powers expressly conferred by the British North America Act, has plenary powers of legislation as large and of the same nature as those of the Imperial Parliament itself, and within these limits the Legislature is supreme. Although the principle sanctioned by this referendum Act may be unusual, and even if it were without precedent, it is not therefore in anywise unconstitutional, either in the sense of changing the constitution of the province or otherwise; and, if it were intended to change the constitution of the province, the undersigned observes that that is one of the powers expressly conferred upon the Legislature except so far as regards the office of Lieutenant Governor. Measures affecting the dignity and prerogative of the Crown as represented by the Lieutenant Governor of the province, within the subjects assigned to his jurisdiction, are likewise in the hands of the Lieutenant Governor, acting by and with the advice and consent of the Legislative Assembly, so that while dissenting in all particulars from the foundation in law or fact of the reasons alleged for disallowance, the undersigned apprehends that if these reasons were admitted as alleged, the Act would still remain an effective measure binding upon the country, and justified by the powers of legislation vested in the province under the Act of Union.

The petitioners have evidently been misled in perusal of the American authorities upon which they rely, in failing to distinguish the constitutional principles which govern in the United States from those which apply in Canada. There are no doubt judicial authorities in the United States for the proposition that, subject to certain exceptions and limitations which is not necessary or convenient here to enumerate the question as to whether a general law shall go into effect or not, cannot be referred to a popular vote of the whole state. It is held that the people, in adopting a constitution casting the powers of legislation upon their representatives in assembly, have thereby voluntarily surrendered their direct law making powers, and that the Legislature cannot under the constitution delegate to the people or to any tribunal, powers which are strictly legislative. Such considerations have no place in the British system, where the authority of Parliament is not limited by any constitutional instrument, and where the power of Parliament to delegate its legislative functions is incontestibly established. It may be observed that the decisions quoted on behalf of the petitioners might be invoked with equal propriety, as grounds for disallowing the Act of 1901, whereby the Legislature empowered the Lieutenant Governor in Council to bring the Liquor Act into force on any date named by proclamation. It is stated in one of these decisions that if Congress were to empower the President to repeal an existing law or create a new law by the exercise of his will, and announce his decision by proclamation, this would be an absurdity on the part of Congress, and their act would be declared void, as undertaking to transfer the legislative power exclusively to the President, and so to abrogate the constitution. The impropriety of applying any such doctrine to the case, in any of the Canadian provinces, of a statute authorized by the Legislature to come into effect upon proclamation of the Lieutenant Governor is, in the opinion of the undersigned, too manifest to require comment.

It is too late to question further the authority of the Provincial Legislatures to legislate with regard to the liquor traffic in the manner and to the extent affirmed by the Judicial Committee of the Privy Council. The legislation now in question does not transgress these limits. It is competent to the Legislature, and the remedy and recourse of the petitioners must be with the Legislature and the people, by whom the acts and proceedings of the representatives are periodically reviewed.

The undersigned, therefore, does not advise the exercise of the power of disallowance with regard to the Referendum Act, 1902, and he recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the province for the information of his government, and to Mr. W. R. Mulock, for the information of the petitioners.

Respectfully submitted,

C. FITZPATRICK,
Minister of Justice.

[illegible]

[illegible]

SIR,—Referring to your despatch, No. 571 dated 19th instant, [illegible]

[illegible]

SIR,—I have the honour to acknowledge the receipt of your two communications [illegible] and in reply I am [illegible]

'Your Government cannot accede to the correctness of the statements contained [illegible] petition [illegible] Manitoba branch of the Dominion Alliance, that the Legislature of the province of Manitoba passed the Act known as the Liquor Act pursuant to [illegible] of the people, given at two plebiscites. On the contrary your Government asserts that the said Act was passed in the exercise of the sovereign will of the people of Manitoba expressed through the Legislature, freely chosen by the people of this province [illegible] ordinary course of legislation in an exercise of those powers vested in the Legislative Assembly of the province of Manitoba under the British North America Act.

'Even if your Government could admit to a plebiscite of the [illegible] referred to in the petition were in any sense a command to enact the Liquor Act in question, [illegible] Act was passed and in which it is now dealt with by the petition.

[illegible] which your Government is aware are: (1.) The plebiscite taken under the authority of an Act of the Legislative Assembly of Manitoba, being Chapter 24 of the Act of the province of Manitoba, passed in the year 1892, and (2) The plebiscite taken throughout the whole Dominion of Canada under the authority of the Dominion Plebiscite Act, being Chapter 51 of 61 Victoria. The said plebiscites were [illegible] and received an expression of opinion from the electors as to the advisability of the total prohibition of the importation, manufacture and sale of intoxicants, in the one instance, in the province of Manitoba, and the other, throughout the whole Dominion of Canada, and was not intended to bind the Parliament of Canada or the Legislative Assembly of Manitoba to introduce and pass such legislation. The votes cast in the province of Manitoba at the said respective plebiscites were as follows: 1892, for 18,637, against 7,115, and in 1898, for 12,367, against 2,955, and while the estimated numbers of electors were 44,573 and 49,304 respectively. It will be clearly seen from these votes that only a small percentage of the electors voted thereat, and that there was a decreased ratio in 1898, and it is estimated that the electorate now numbers over 70,000.

'The Legislative Assembly of Manitoba, notwithstanding the said first plebiscite, declined to act and did not act thereon. The Parliament of Canada notwithstanding the said plebiscite did not feel called upon to act thereon. The last of these two

[illegible] taken by the Government of the Dominion of Canada, [illegible] to the manufacture, sale and importation throughout the whole D[illegible]

[illegible]

[illegible] Legislature of the D[illegible]

[illegible] that it is manifestly to be demonstrated that the electors of this province are not your [illegible] such an Act and have [illegible] power of. The [illegible] prohibiting either the manufacture, importation or exportation of intoxicating liquors, as is made abundantly clear from both the judgment of the Court of King's Bench of [illegible] of Manitoba and the reasons of His Majesty's Privy [illegible] section 119 of the said Liquor Act.

'For these reasons, an A[illegible] ment [illegible] is the utmost limit of the powers of the [illegible] prohibitory legislation, but which falls short of the questions submitted in the plebiscite [illegible] tors of the province is in favour of such legislation [illegible] For this purpose, and that your Government [illegible] troduced the Referendum Act. That the action of your Government in [illegible]

'Your Government most respectfully declines to accept the statements in the petition that the aforesaid reference [illegible] resentative and responsible Government, and [illegible] Crown." On the contrary your Government earnestly urges that [illegible] people as intended by the Referendum Act, your Government is acting in strict accordance with constitutional principles, in conformity with both Dominion [illegible] Privy Council [illegible]

'The questions dealt with by the said petition are matters wholly within the constitutional right of the province, and your Government would respectfully submit that [illegible] of the Legislative Assembly, acting unanimously within such rights, ought not to be interfered with, and certainly not on the reasons set forth in the petition so transmitted to His Excellency.'

'I have the honour to be, sir,

'Your obedient servant,

'D. H. McFADDEN,

'Provincial Secretary.'

I have the honour to be, sir,

Your obedient servant,

D. H. McMILLAN,

Lieutenant Governor.

MANITOBA.

3 EDWARD VII., 1903.

4TH SESSION, 10TH LEGISLATURE.

Extract from a Report of the Hon. the Minister of Justice, dated 8th January, approved by His Excellency the Governor General in Council on the 23rd day of March, 1904.

These Acts were received by the Secretary of State for Canada on 31st M 1903.

Chapter 41, intituled An Act respecting the Revised Statutes of Manitoba, 1 provides for the bringing into force of the recent revision of the public statute Manitoba. Some of these Acts so revised have been from time to time the subjec unfavourable comment by the predecessors of the undersigned. In recommend therefore, that the statute in question be left to its operation the undersigned desire renew these objections, leaving them to such determination as has been thought pedient heretofore.

Chapter 53 intituled: 'An Act respecting the Dominion Perman t Loan C pany.'

This Act relates to a company incorporated by authority of the Legislature of tario, and it provides that the company shall be a body corporate and authorized to ca on business in Manitoba to the same extent as it is entitled under its charter grante the Province of Ontario. Such legislation is objectionable for reasons which the un signed has mentioned in previous reports. The local Legislature has only authority incorporate companies for provincial purposes, and the company in question hav been incorporated for the provincial purposes of Ontario, it is, the undersigned c ceives, very questionable whether the capacity of the company may be enlarged by Legislature of another province. The undersigned conceives, however, that his d with regard to the matter is accomplished by calling attention to the serious quest which the Act presents.

Respectfully submitted,

C. FITZPATRICK,

Minister of Justice.

BRITISH COLUMBIA.

1 EDWARD VII., 1901.

2ND SESSION—9TH LEGISLATURE.

EXTRACT from a Report of the Honourable the Minister of Justice, dated 31st December, 1901, approved by His Excellency the Governor General in Council on the 25th January, 1902.

These Acts were received by the Secretary of State for Canada on 24th June last. A separate report will be made upon the following chapters:

Chapter 10, 'An Act to amend the "Companies' Act, 1897."'

Chapter 25, 'An Act respecting the Fisheries of British Columbia.'

Chapter 32, 'An Act to authorize the loan of $5,000,000 for the purpose of aiding the construction of railways and other public works.'

Chapter 37, 'An Act to amend the "Inspection of Metalliferous Mines Act" and amending Act.'

Chapter 46, 'An Act to provide for the collection of a tax on persons.'

Chapter 65, 'An Act to amend "The Arrowhead and Kootenay Railway Company Act, 1898."'

Chapter 68, 'An Act to incorporate the Chilcat and Klehini Railway and Navigation Company.'

Chapter 69, 'An Act to incorporate the Coast-Kootenay Railway Company, Limited.'

Chapter 70, 'An Act to amend the "Columbia and Western Railway Company 1896."'

Chapter 71, 'An Act to incorporate the Comox and Cape Scott Railway Company.'

Chapter 72, 'An Act to incorporate the Crawford Bay Railway Company.'

Chapter 77, 'An Act to incorporate the Imperial Pacific Railway Company.'

Chapter 79, 'An Act to incorporate the Kootenay Central Railway Company.'

Chapter 80, 'An Act to incorporate the Lake Bennett Railway.'

Chapter 81, 'An Act to incorporate the Midland and Lake Vernon Railway Company.'

Chapter 83, 'An Act to incorporate the Queen Charlotte Islands Railway Company.'

Chapter 84, 'An Act to incorporate the Vancouver and Grand Forks Railway Company.'

Chapter 85, 'An Act to incorporate the Victoria Terminal Railway and Ferry Company.'

Chapter 86, 'An Act empowering the Corporation of the City of Victoria to lease the market building premises and otherwise carry into effect the "Victoria Terminal Railway By-law, 1900."'

Chapter 87, 'An Act to incorporate the Yale Northern Railway Company.'

Chapter 45, 'An Act respecting certain land grants.'

This Act recites that, under the provisions of certain statutes of the province, grants of land have been made from time to time to railway companies to aid in the construction of certain railways. That it was the intention of the Legislature and of

[illegible]

Chapter 75, 'An Act to [illegible] the Crown's Nova Scotia Railway Company,' has also been reported upon. Your report of the [illegible] 25th September last.

Respectfully submitted,

C. FITZPATRICK,

Minister of Justice.

The Deputy Minister of Justice to the Honourable the Attorney General of British Columbia, respecting Chapter 45.

DEPARTMENT OF JUSTICE, OTTAWA, 16th September, 1901.

SIR,—I am directed to enclose, for your information, and such observations as may desire to submit, copy of a letter from Messrs. Bodwell & Duff, barristers Victoria, B.C., of the 30th ultimo, seeking disallowance of an Act passed at the session of the British Columbia legislature, being chapter 45, intituled 'An Act specting certain railway land grants.'

I am to state that the minister will, in reporting upon this measure, be gla consider any reply which you desire to make.

There were some enclosures with the letter, but these relate to proceedings in cause, and you are doubtless able to refer to them.

I have the honour, &c.,

E. L. NEWCOMBE,

Deputy Minister of Justice.

[illegible]

In the year 18[illegible], a section was [illegible] in the [illegible] Act, which was in force at the time of th[illegible] that there should be reserved for the use of the Crown a royalty of fifty cents per [illegible] and feet board measure in respect of all [illegible] railroad ties, which should be cut upon any Crown lands, patented lands, [illegible] holds, timber lands, 'and upon any lands hereafter gr[illegible].'

In the year 1896, the Land Act was amended by providing that the roy[illegible] apply to timber used as props for mining purposes, shingle or other bolts of cedar, [illegible] a further royalty of 25 cents on every cord of other wood cut upon Crown lands.

In 1893, the Nelson and Fort Sheppard Railway was declared a work for the [illegible] eral advantage of Canada, and was re-incorporated as a Dominion railway, being Chapter 57 of the Dominion Statutes of 1893. The railway was built under the Dominion Statute, and after completion, the lands mentioned in the subsidy Act of the local Legislature were duly granted to the company. Shortly after, a question arose as to whether the timber on the lands so granted was subject to royalty. The railway company contended that they were not liable, and the government insisted that the timber on such lands was subject to the provisions of the Land Act. It was proposed by the company that the question should be settled either by a reference to the Supreme Court of British Columbia under the 'Supreme Court Reference Act,' or by some other form of litigation, and in the meantime an arrangement was entered into between the government and the company in the following words:—

'VICTORIA, B.C., January 26th, 1897.

'SIR.—Referring to your conference with the government on 13th inst., on which occasion the following arrangement with reference to royalties on timber and cord-wood cut upon the Nelson and Fort Sheppard Railway Company's land grant was agreed upon, viz.:—

'1st. You are to make monthly returns to the Provincial Timber Inspector at Vancouver, giving the particulars of timber and cord-wood cut by all and every person

whatsoever on the said land grant, and to remit your cheque therewith in payme royalties thereon.

'2nd. The persons actually cutting timber or cord-wood under authority your company are also to make returns to the Timber Inspector at Vancouver mo in accordance with the provisions of the Land Act.

'3rd. Official receipts will be forwarded to you for all royalties paid, which contain a clause that in the event of its being decided that the said royalties are by not due to the Crown, the moneys so paid will be refunded to you.

'4th. The books of your company and those of persons cutting timber by authority are to be open to the inspection of government officers.

'This letter is to confirm the above arrangement, and those persons who already paid royalty on such timber will be notified of the purport of this arrange and advised that in future the government look to you to make payments.

'Some printed forms for returns of timber have been mailed to your address.

'I have the honour, &c.,

'GEORGE B. MARTIN,

'*Chief Commissioner of L. & W.*'

'D. C. CORBIN, Esq., President Nelson and Ft.
'Sheppard Ry., Spokane, Wash.'

SPOKANE, January 29th, 1897.

'HON. GEO. B. MARTIN, Chief Commissioner
'Lands and Works, Victoria, B.C.

'SIR,—I acknowledge receipt of your letter of the 26th inst., and have carefu noted contents. The monthly accounts will be rendered promptly to the Timber spector at Vancouver as directed, and in the ordinary course he should receive th statements somewhere from the 8th to the 15th of the following month.

'My recollection is, that the law applies to lumber and cord-wood only. There certain other things, such as timber used in mines for stalls and lagging, which I inclined to think would be rated by the cord, possibly by the lineal foot. Will you me know in regard to this?

'I trust that prompt notification of the arrangements made will be sent to perso who have paid royalty, so that no misunderstanding may occur, and in order that t business may proceed smoothly hereafter.

'The blank timbers returns have been received.

'Respectfully,

'D. C. CORBIN, *President*.'

Various delays occurred in bringing the matter before the courts. In the mea time, the company went on paying the royalty under the terms of the agreement. Su sequently, the government of which Mr. Martin was Chief Commissioner was defeate and by reason of the many changes in the administration which have taken place i British Columbia since 1898, it was not convenient to get the matter before the court except by some adverse proceedings against the government, which the company wer unwilling to institute except as a last resort.

The Kaslo and Slocan Company was incorporated by a similar Act of the local Leg islature, and had a land subsidy in the same words as the Nelson and Fort Sheppar Railway Company. Its undertaking was completed and the lands were granted to th company.

The capital stock in both companies was subsequently acquired by representative of the Great Northern Railway Company, and from that date the two local roads wer operated as a part of the Great Northern system. The proceedings which afterward took place with reference to timber royalties were, by arrangement, carried on in th

name of the Kaslo and Slocan Company, but it was understood that the decision in respect to one railway should operate as a settlement of the question in so far as both companies were concerned.

On the 27th of June, 1900, the solicitor for the Kaslo and Slocan Company addressed a communication to the Attorney General, laying the matter before him and requesting that some action should be taken. No satisfactory r[illegible] the solicitors of the railway company [illegible] to this communication [illegible] Exhibit 'A' [illegible] be granted. The solicitor for the company [illegible] to Victoria and personally interviewed the Attorney General. He was informed by that official that the matter would be considered, and that if the Attorney General came to the conclusion that the contention of the company was well founded, there would be no necessity to go to the expense of a petition of right, as the government would refund the money without suit.

Nothing further was heard, however, from the Attorney General's department. In November, one Martin, a timber inspector for the district, demanded further payment of royalties from the company. This was refused, and the inspector then seized two of the company's engines and took possession of a round-house. The solicitor for the Kaslo Company was at that time in Vancouver, and he interviewed the Attorney General and urged a decision on the question of the application for a petition of right. It was explained that it had not been possible to bring the matter to the attention of the Premier, but a decision was promised in ten days. The company waited for twenty-seven days, and having then received no reply from the Attorney General's department, issued a writ for trespass against the inspector personally. The statement of claim in the action was delivered on the 8th of January, 1901. Ten days later an application was made to the judge to extend the time for defence, on the ground that it was necessary to consult the Attorney General. The extension of time was granted. A defence, prepared by the Attorney General's department, was delivered on the 8th of March, 1901. (Annexed hereto and marked Exhibits 'B' and 'C' are the statement of claim and the statement of defence as originally filed.)

The local legislature convened on the 21st of February, 1901. On the 2nd of March, 1901, Bill No. 7, introduced by the Attorney General, and which subsequently became the Act referred to in the first part of this letter, was read the first time. While this Bill was on the Order Paper for second reading, the following correspondence took place between the firm of Bodwell & Duff, representing the Nelson and Fort Sheppard Railway, (and who were acting in conjunction with the solicitor for the Kaslo and Slocan Railway) and the Attorney General:—

'VICTORIA, B.C., March 6th, 1901.

'SIR, Our attention has been called to Bill No. 7 introduced by you, which amounts in fact to a declaration that the land subsidies given to the Nelson and Fort Sheppard Railway Company and the Kaslo and Slocan Railway Company were always subject to the provisions of the Land Act respecting timber royalty.

'As you are aware, for some years past we have been endeavouring to get this matter before the courts in the form of a case stated for the opinion of the court as to the construction of the various land subsidy Acts. As we were unable to get the matter brought before the courts in that way, the Kaslo and Slocan Railway Company, a short time ago, refused to pay certain timber dues, in consequence of which one of the officials of the government seized certain property of the company, and we have brought an action against him for such act, in which the question of the construction of these Acts will come up for the consideration of the court. It was well understood between the government and us at the time that this was to be a test action, and the circumstances were arranged, so that the interpretation of the Act might be the subject of a decision of the court. In that condition of things, it certainly seems surprising that the Legis-

lature sh u'd now attempt to interfere with this matter, and by an *ex post facto* la
a construction on the subsidy Acts, which may be differen from that which the
will pronounce when the matter comes before it. You must know that very little
attaches to these land grants outside of the timber which is upon them, and that
the various Acts went through, there was no question in the minds of any of the p
to the transaction, but that the railway companies were obtaining the unrestricted
to the timber on these lands. It was a matter of considerable surprise to them
the government first proposed to collect the royalty, and at the instructions of the
son and Fort Sheppard we immediately applied to you, when you were formerly
ney General, for the purpose of having a case stated in order to test the position.
however, you did not see your way to do, and as the company did not wish to be inv
in direct litigation with the government, and as it was thought that matters mig
arranged later on, we went on paying the royalty under protest, and with the id
eventually testing the question in the manner we have indicated above.

'If it should be that our contention is correct, and that this timber belongs t
companies, you will see that the present Act is in the nature of a confiscation by le
tive declaration, of a property which has been given to the different railways fo
purpose of assisting their undertaking. We are sure that the government woul
propose any legislation of this kind, and we are bound to assume that the Bill has
introduced by you under some misapprehension as to the actual facts of the case
on behalf of the Nelson and Fort Sheppard Railway Company and the Kaslo and
can Railway Company, for whom we are acting, we have the honour to request tha
government will consider this phase of the case before putting the Bill through
House, and make such amendments as will be necessary to protect the rights o
parties, if any.

'In this connection, we may mention that a few days ago we addressed a lett
the Chief Commissioner of Lands and Works on this very subject, requesting hi
arrange a scheme by which purchasers from us could take the timber free of roy
we agreeing to give security that in case the decision of the action now pending sh
support the government's contention, all royalties on timber cut in the meantime w
be paid.

'We have, &c.,

'BODWELL & DUFF.

'VICTORIA, B.C., March 7th, 1901.

'Re Nelson and Fort Sheppard Railway Lands.

'SIR,—I herewith enclose copy of an official communication which I have se
the Provincial Secretary.

'I have, &c.,

'E. V. BODWELL.

'To the Honourable the Attorney General,
'Victoria, B.C.'

(ENCLOSURE):

'Re Timber Royalties on Nelson and Fort Sheppard Railway Lands.

'VICTORIA, B.C., March 7th, 1901.

'SIR,—Referring to the verbal interview which I had with the government yester
I beg now to inform you that I have, since returning to my office, looked up the cor
pondence in this matter as far as possible, and I find that in January, 1897, Mr. C
bin and the timber inspector, who was acting under instructions from the governme

as our letters from them show, entered into an arrangement by which the Nelson & Fort Sheppard Railway Company should collect the timber dues and hand over to the government the proportion which the government claimed, it being understood, however, that the matter was to be brought before the courts, and that a refund of the money should be made by the government, if it were thereafter decided that the lands were not subject to royalties. The original document containing this agreement was forwarded by us to the Attorney General's department some time about the 15th or 16th of January, 1897, and will be found on record there; so that all collections made by the Nelson and Fort Sheppard Railway Company, and all payments have been subjected to that arrangement. I also enclose a copy of an official communication signed by Mr. Martin, as Chief Commissioner of Lands and Works, which was forwarded to Mr. Corbin, in pursuance of the understanding to which I have referred, and which shows clearly the terms upon which the money was paid.

'I am sending a copy of this [illegible] the Attorney General.

'We, &c.,

'E. V. BODWELL.

'To the Honourable the Provincial Secretary,
'Victoria, B.C.'

NOTE.—The enclosure in the above letter was copy of letter addressed to Mr. D. C. Corbin by the Chief Commissioner of Lands and Works, dated January 26th, 1897.

'VICTORIA, B.C., March 7th, 1901.

'Re Timber Dues—Nelson and Fort Sheppard Lands.

'SIR,—We enclose copies of some correspondence in this matter which we had with you and Mr. Corbin. If you will follow this line in your office you will see that there was a clear arrangement made with us as to the question how the liability of the Nelson and Fort Sheppard Railway was to be settled, and also that in collecting the timber dues that company was doing so, under a well understood arrangement with the government.

'We have the honour to be, &c.,

'BODWELL & DUFF.

'To the Honourable, the Attorney General,
'Victoria, B.C.'

'7th March, 1901.

'Re Timber Dues on Kaslo and Slocan and Nelson and Fort Sheppard Lands.

'SIRS,—I have the honour to acknowledge receipt of your communication of the 6th inst., respecting the Bill introduced by me, declaring that the lands granted to railway companies by the Lieutenant-Governor-in-Council in aid of the construction of certain railways in this province, have always been subject to the provisions of the Land Act, reserving a royalty to the Crown upon timber. It never was the intention of the government, or the legislature, to exempt railway aid lands from the timber royalty clauses of the Land Act. The government have always taken the position that this royalty should be paid, and from time to time have taken stringent measures to enforce payment. In my opinion, a fair construction of these subsidy Acts leads to the conclusion that these lands are subject to timber royalty, as on all other lands granted by the Crown since the year 1888. Any other construction would defeat the intention of the legislature, and the Crown would be deprived of an important source of revenue.

'I consider it quite proper for the legislature to reform the Acts authorizing way subsidies, so that there will be no room whatever for doubt about the reserv of this royalty.

'You state that it was well understood between the government and your that the action of the Kaslo and Slocan Railway Company against J. R. Martin, o the government collectors of timber royalty, was instituted as a test case. If by statement you mean that the government authorized or encouraged, or was in any a party to the bringing of this action, I must say I do not know on what it is base received no intimation from any source that this railway company contemplated ceedings against Mr. Martin. My first knowledge of the case was derived fr letter received at this department on the 3rd of January of this year, from the vincial Timber Inspector, enclosing a copy of the writ served on Mr. Martin.

'I have, &c.,

'D. M. EBERTS,

'*Attorney General*.

'Messrs. BODWELL & DUFF, Barristers,
'Victoria, B.C.'

'VICTORIA, B.C., March 7th, 1901.

Re Timber Dues on Kaslo and Slocan and Nelson and Fort Sheppard Lands

'SIR,—We have the honour to acknowledge receipt of your letter of the 7t March, 1901.

'We cannot assent to the proposition that, because the government have al taken the position that these lands were subject to timber dues, therefore the pre Act is a proper one to bring in. You must agree that the question is one to be de by an interpretation of the former subsidy Acts, and that, as the matter is now pen in the courts, it is most improper to forestall the decision by a piece of legisla which gives an interpretation to these Acts at this date. The question, we think, is of contract between the companies constructing the railways and the government. consideration of that construction the government promised certain things; that mise was put into writing in the form of an Act which was passed by the legislatu on the faith of that Act the railway was built and full consideration for the cont paid by the companies in that way. The suggestion now is, that by the present le lation an interpretation is to be put upon that contract which may be different f the construction which the courts will place upon the Act in question. The inten of the parties must, like every other question in the matter of this kind, be determi by the language which they have used; the ideas which the parties had, outside of language of the statute, cannot now be taken into consideration even if we could a upon that point, which is impossible. From our knowledge of the situation, as solici for the Nelson and Fort Sheppard Railway Company, we know that the company always contended that the intention was, that they should receive the timber fre dues, otherwise, as we have already pointed out, the land grant was of very little va The government also should remember that land grant bonds have been sold to inno parties on the faith of this transaction, and upon the construction which their solici advised them would be placed upon the subsidy Acts in question. Surely, it needs argument on our part to convince you that to change this position now is most imp per. The companies, of course, must take the Act as it reads, and if your content is correct the courts will hold that the timber dues are payable by them, but if the c should hold otherwise you surely must agree that it is little short of confiscati property, to pass an Act now which would compel the court to construe the Act acc ing to your contention.

'We hope that you will be able to see the force of these views and comply with our suggestion to make such amendments as will protect whatever rights are already vested in the companies who have obtained lands under the subsidy Acts to which we have referred.

'We have, &c.,

'BODWELL & DUFF.

'To the Honourable the Attorney General,
'Victoria, B.C.'

Notwithstanding the protests above referred to, the Bill above mentioned passed third reading and was assented to with the other Acts of the session.

On the 30th of April, 1901, a further defence was delivered in the action then pending in the Supreme Court of British Columbia against the Inspector Martin, in the following words:

'1. Since the defendant delivered his statement of defence herein, an Act intituled "An Act respecting certain Railway Land Grants," was on the 25th day of April, A.D. 1901, enacted by the legislature of the Province of British Columbia, whereby it is declared and enacted that all grants of Crown lands made prior to the passing of the said Act to railway companies by the Lieutenant Governor in Council in aid of or as a subsidy to construction of railways, were subject to the provisions of the Land Act with respect to the reservation of a royalty to the Crown upon all timber and other wood cut upon lands to be granted by the Crown, and with respect to the power conferred for the enforcement of said royalty and that said grants of land were subject to said provisions as from time to time amended and re-enacted, and are subject to said provisions as they appear in the Land Act and its amendments now in force.'

The bonds which were issued for the construction of the Nelson and Fort Sheppard Railway were secured on the land grant as well as on the earnings of the road. A part of these bonds have been retired by the use of the proceeds of the sale of lands. There is now outstanding in the hands of *bona fide* holders bonds to the extent of $1,293,000. The road has never earned more than its operating expenses, and the undertaking could not be sold on its merits for a sum sufficient to pay the outstanding bonds, and except for the land grant the bonds are of very little value.

There is not to exceed 30,000 acres of agricultural land in the whole grant; the balance of the land is mountainous, rocky and worthless, except for the timber upon it. It is estimated that there is about five hundred million feet of lumber upon the unsold portion as well as many thousand cords of wood. The value of the grant is diminished by the amount of royalty chargeable upon the timber and wood as above.

The Kaslo and Slocan Railway also is bonded and its securities are in the hands of *bona fide* holders. As in the case of the Nelson and Fort Sheppard Railway their value is dependent almost entirely upon the land grant. The amount of agricultural land is small, but there are many million feet of timber suitable for ordinary purposes and many thousand cords of wood.

We have the honour to request that you will consider whether the Act above referred to, namely, chapter 45 of the Act of last session of the local legislature of British Columbia, should not be disallowed on the ground that it has prevented a decision of the courts upon a question materially affecting Dominion interests. The Nelson and Fort Sheppard Railway is a Dominion railway; it has been built and put into operation by money advanced upon securities which were issued upon the assumption that the lands in question were valuable, for the reason that the timber upon them was not subject to royalty. The ground upon which that contention is based is, shortly, that the Land Act referred only to grants made by the Crown in the ordinary course of the administration of public lands, whereas, the lands in question were granted to the railway company in pursuance of special legislation, and it was not intended that the ordinary provisions of the Land Act should apply. Since, there-

fore, the special Act under which the lands were granted made no reservation of timber royalties the contention is, that they could not be subject to that duty by reason of the language of the general Land Act. It will be noticed also, that the Act passed at the last session of the legislature, against which we are now complaining, subjects the lands to duty upon props for mining purposes, shingle or other bolts of cedar, and twenty-five cents a cord for all other wood. These provisions were not in force at the time the Subsidy Act was passed, but only became law in the year 1896, long after the railway was built and in operation. It is contended that it never could have been the intention of the railway company or the legislature to subject the lands in question to the provisions of the general law, which, as already seen above, is being amended from time to time with reference to timber upon ordinary ungranted lands of the Crown.

It is submitted that it would be improper to permit the local legislature to deal with the securities of a Dominion railway in the manner above referred to. If the principle is admitted that, after a railway has become subject to Dominion control, its assets can be impaired, to the detriment of the holders of its securities, at the will of the local legislature, it is possible to conceive of a case in which the undertaking would be completely destroyed by the caprice of the local authority, although it had been declared a work for the general advantage of Canada and should be maintained accordingly.

It is clear that the matter in question was the subject of a *bona fide* dispute, and that the government agreed that it should be submitted to the courts for consideration. The efforts of the company to have the question adjudicated upon in a friendly manner were counteracted by the delays interposed by the government and the inattention of the Attorney-General's department, and the companies were driven at the last to enforce their rights in an ordinary action of trespass against a government official. While the action was pending in the courts, the legislature passed a special Act forestalling the decision, and preventing the company from obtaining a judicial construction of the contract upon which they had built the railway.

The amount involved is very large and entails serious consequences upon the company. We have the honour, therefore, to request that the matter may receive the attention of the executive and, if it is in accordance with the usual practice, the company request that they may be further heard verbally before the Governor in Council at a time and place which may be appointed for that purpose.

We have, &c.,

BODWELL & DUFF.

The Honourable the Attorney General of British Columbia to the Honourable the Minister of Justice.

ATTORNEY GENERAL'S OFFICE,
VICTORIA, December 20th, 1901.

SIR,—I have the honour to acknowledge the receipt of a letter bearing date September 16th last from your deputy, enclosing copy of certain correspondence addressed to you by Messrs. Bodwell and Duff, barristers of this city, urging the disallowance by the Dominion executive, of an Act passed at the last session of the British Columbia legislature, being chapter 45, of the statutes of 1901, and being intituled 'An Act respecting certain Railway Land Grants.' The disallowance of the Act is sought on the ground that it will compel the Nelson and Fort Sheppard Railway Company and the Kaslo and Slocan Railway Company to pay to the government of British Columbia a royalty upon timber cut upon the lands granted to said companies by the government in aid of the construction of said railways. The railway companies in question were incorporated by special Acts of the legislature

the province, and by other Acts the Lieutenant Governor in Council was empowered to grant to the companies certain lands as an aid towards the construction of said railways. I am personally aware of the facts in connection with the grant of said aid, and I know it was the intention of the legislature that the lands so granted should be subject to the land laws of the province respecting royalty upon timber. It may be that the intention of the legislature was not expressed as clearly as it might have been expressed, and therefore upon a narrow construction of the said Acts by the courts, the government might lose an important source of revenue from the lands of these companies. This is a purely local and domestic matter, to be dealt with by this legislature. It is essentially a question of the exemption of the timber products of certain railway aid lands from a species of taxation, in view of the way in which the royalty is reserved or imposed and from time to time changed by the legislature. If this legislature has no doubt about its intention, it seems to me it is quite proper for it to reform the terms in which that intention is expressed so as to render it impossible for the companies to take more than they should receive.

In this connection, permit me to draw your attention to subsection (41) of section 10, of chapter 1, of the Revised Statutes of this Province, intituled the 'Interpretation Act of British Columbia.' That subsection is as follows:—

'Every Act shall be so construed as to reserve to the legislature the power of repealing or amending it, and of revoking, restricting or modifying any power, privilege or advantage thereby vested in or granted to any person or party whenever such repeal, amendment, revocation, restriction or modification is deemed by the legislature to be required for the public good.'

You will, therefore, see that the legislature has merely exercised a reserved power which is as much a term of the said Aid Acts, as if it were expressly embodied therein.

I would also observe that any interference with the impugned legislation would have a most disastrous effect upon the revenues of the province, as thereby the government would be deprived of the great bulk of the royalty upon timber at present received, which constitutes a very considerable portion of the income of the province.

Messrs. Bodwell & Duff also seek your intervention on the ground that in 1893 a Dominion corporation called the Nelson and Fort Sheppard Railway Company was created by Chapter 57, of the Dominion Statutes of that year, and the said railway declared to be for the benefit of Canada. With that Dominion corporation the legislature of British Columbia has nothing whatever to do. The bonus was given to a provincial corporation. The provincial corporation is an entirely different legal entity from the Dominion corporation. This is a royalty reserved in respect of lands granted by the province to a company, and with respect to which lands the Dominion has not legislated at all. The fact of the Dominion declaring the railway to be for the general advantage of Canada would regulate the corporations status quo railway, and possibly the lands included in the right of way, but would not prevent the province from taxing those lands by way of royalty, or in any other way, or from moulding in any manner it deems for the public good, the aid the company shall receive. Even if we are now dealing with a Dominion corporation, the legislature of this province is certainly acting within the compass of its powers when it reforms one of its own Acts. You may say you do not approve of the policy of the Amending Act, and therefore you will disallow it, although it is *intra vires*. In my opinion the power to disallow *intra vires* legislation is a power which should be sparingly exercised. In this case the legislature has considered all the correspondence, facts and arguments submitted to you as a ground for disallowing the Act, and it has deliberately decided that it is for the public good that the Act should be on the statute book.

It seems to me the Dominion executive should not nullify the action of a provincial legislature acting within its powers, except where it runs counter to some general public policy, or to the legislation of the Dominion. The Dominion, apparently for reasons affecting Canada as a part of the empire, has adopted as its policy that Japanese

shall be allowed to enter Canada in the same terms as other Indians. To carry its policy it has deemed it necessary to disallow the British Columbia Immigration A 1900. Although I disapprove of this particular exercise of the disallowance power, I can understand that the Dominion executive have overridden the *intra vires* legis tion of this province pursuant to the dictates of what they have established as the p policy of Canada.

Should the Dominion Parliament enact an insolvency law I would consider i proper exercise of this power to disallow any provincial statute which, although el *intra vires*, would interfere with the operation of the Federal legislation.

In the early days of Confederation the Dominion executive appear to have b imbued with the notion that the relation between the Dominion and the province analogous to that existing between parent and child and to have acted accordin That view of the status of the provinces has been overthrown by a series of Impe Privy Council decisions which have clearly established that the provinces, acting wit the scope of their powers, are almost sovereign states, and that they are entitled to ex cise all the prerogatives of the Crown not conferred upon the Dominion. The logi conclusion from these decisions is that the disallowance power is improperly exer i except in the cases I have above mentioned. Of late years the Dominion execut appear to have adopted this view. Although very strong arguments were advanced the disallowance of the Jesuits Estates Act, yet the power was not exercised.

By chapter 13, of the statutes of 1888, the legislature of Manitoba enacted declared that an agreement for public printing between Her Majesty the Queen, Edward Trudel, was to be deemed cancelled as of the 1st day of February, 1888, that there should be no claim against Her Majesty for damages or otherwise in con with said agreement for any matter after said 1st day of February. A petit was presented to His Excellency the Governor General praying that said Act should disallowed as being an invasion of a contractual right. In that case also the Domin authorities declined to interfere.

I therefore most respectfully submit that the legislation complained of by solicitors for the above-mentioned railway companies should not be disallowed by Excellency the Governor General in Council.

I have the honour to be, &c.,

D. M. EBERTS,
Attorney General.

Report of the Honourable the Minister of Justice upon Chapter 45, approved by Excellency the Governor General in Council on May 31st, 1902.

DEPARTMENT OF JUSTICE, OTTAWA, May 16th, 1902.

To His Excellency the Governor General in Council:

The undersigned has had under consideration chapter 45 of the Acts of Brit Columbia, 1 Edward (1901), intituled 'An Act respecting certain railway l grants.' This Act has already been mentioned in the report of the predecessor office of the undersigned, dated December 31st last. The Act recites the intention the legislature and the government, that grants of land which had been made to r way companies to aid in the construction of the railways, should be subject to provisions of the Land Act and its amendments and re-enactments, reserving to Crown a royalty upon timber and other wood, and conferring powers for the enfo ment of such royalty. It recites that it is desirable specifically to provide and decl that the Land Act applied and now applies to lands granted as aforesaid. It provi that all grants of Crown lands made to railway companies by the Lieutenant Gover in Council before the passing of the Act in aid of, or as a subsidy for, construction railways were subject to the provisions of the Land Act with respect to the reservat

[illegible] of a royalty to the Crown [illegible] and with respect to [illegible] royalty. The Act declares [illegible] as to taxation [illegible] appearing in the Land Act [illegible] Act. It further declares that the provisions reserving a royalty to the Crown are not to be considered as taxation within the meaning of any [illegible] company or its property, real or personal, [illegible].

A further petition on behalf of the Nelson and Fort Sheppard Railway Company and the Kaslo and Slocan Railway Company has been presented to the undersigned, and the undersigned has heard counsel in behalf of the prayer of the petitioners for disallowance. Copy of the petition is submitted herewith.

The undersigned has attentively considered the allegations and grounds raised by the petitioners. The authority of the legislature to enact the statute in question is beyond dispute. Such authority is in fact not questioned. The undersigned does not consider it necessary to determine whether the Act is merely declaratory of the rights of the parties affected, as urged on behalf of the government of British Columbia, or whether it imposes burdens upon the lands in question to which they were not previously subject. The petitioning companies contend that under provincial legislation, and by the grants under which they hold the lands, and wood cut upon those lands was not subject to any tax or royalty, and that the imposition thereof as effected by the statute seriously diminishes the value of the property. It appears that litigation was pending between the government and the petitioners at the time of the passing of the Act with regard to the petitioners' liability to pay these royalties, and no doubt a very strong case is made out by the petitioners in support of the view that the legislature should have allowed the existing law to operate, and should not have undertaken to legislate so as to diminish or affect existing rights.

The undersigned cannot help expressing his disapprobation of measures of this character, but there is a difficulty about Your Excellency in Council giving relief in such cases without affirming a policy which requires Your Excellency's government to put itself to a large extent in the place of the legislature and judge of the propriety of its acts relating to matters committed by the constitution to the exclusive legislative authority of the province. So far as the Nelson and Fort Sheppard Railway is concerned, it is to be observed that there was a Dominion Act passed in 1893 declaring the railway to be a work for the general advantage of Canada, and its provincial charter was thereby confirmed by parliament. Afterwards the company mortgaged its railways and land grants to secure payment of its bonds, and the bondholders are now affected by the provincial statute in so far as it imposes a charge upon the property or the wood cut thereon which did not previously exist. The undersigned has considered whether the Act, therefore, should not be held to affect rights sanctioned by Dominion legislation and to interfere with the policy of the Dominion. He has concluded, however, that inasmuch as it is competent to the legislatures to tax the property of the Dominion corporations, and inasmuch as the Act respecting these railway land grants, if not declaratory, is a taxing act, it would not be proper for Your Excellency on that account to exercise the power of disallowance. The undersigned feels unable therefore to make any recommendation other than that the Act be left to such operation as it may have, and that a copy of this report, with a copy of the petition referred to, be transmitted to the Lieutenant Governor of British Columbia, with the recommendation on behalf of Your Excellency's government that the matter be further considered with the view, if possible, to restore the rights of the petitioners as they existed previous to the passing of the Act, and upon the faith of which the expenditures of the companies are alleged to have been made and their obligations incurred.

Respectfully submitted.

C. FITZPATRICK.

Minister of Justice.

Report of the Honourable the Minister of Justice upon Chapter 73, approved by His Excellency the Governor General in Council on the 25th September, 1901.

DEPARTMENT OF JUSTICE, OTTAWA, 19th September, 1901.

To His Excellency the Governor General in Council:

The undersigned has had under consideration Chapter 73 of the Acts of the legislative assembly of the province of British Columbia, passed in the first year of His Majesty's reign (1901), intituled:

'An Act to incorporate the Crow's Nest Southern Railway Company.'

The company so incorporated, is by the terms of the Act authorized among other things to construct and operate a line of railway from Michel in the said province to a point therein, at or near the international boundary; also from that line to a point within the province at or near the easterly boundary thereof, and thence again by the route described in the statute to another point upon the easterly boundary of the province. The Act thus professes to confer authority upon the company to construct and operate railways connecting a point upon the boundary between British Columbia and the United States, with two points upon the boundary between British Columbia and the North-west Territories. The power of a provincial legislature to authorize such works depends first upon the question whether these lines of railway ought to be regarded as local works or undertakings, and if so, secondly, whether they are not within the exception to provincial jurisdiction over local works and undertakings defined as 'lines of steam or other ships, railways, canals, telegraphs and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province,' and thirdly, whether upon the fair construction of all the provisions of sections 91 and 92 of the British North America Act a provincial legislature can be held to have authority to provide for the construction and operation of railways running through the province and connecting the United States with the province and the other portions of the Dominion. It would seem to be certain that if the lines of railway in question occupied the same relation to two provinces of the Dominion which they do to the United States and the North-west Territories, that the Act would be *ultra vires*, but the United States is a foreign country and the North-west Territories are not a province, so that these undertakings do not fall within the letter of the express exception above quoted. It is doubtful, however, whether work making such connection can be considered local in their character, and, therefore, within the power conferred. It is observed also that parliament has given exclusive power to legislate with regard to ferries between a province and any British or foreign country or between two provinces; that lines of steamships between any British or foreign country are excepted from provincial powers, and having regard to the intention and scope of the section defining the respective authority of parliament and the legislature, it would seem to be anomalous that a legislature should authorize the construction of lines of railway such as those in question.

Similar objections have heretofore been stated with regard to provincial railways touching the international or provincial boundaries, but it has not been considered in such cases that the public interest demanded disallowance, because of the facilities afforded for raising these questions in the court where they may be judicially determined.

Section 23 of the Act provides that 'no aliens shall be employed on the railway during construction unless it be demonstrated to the satisfaction of the Lieutenant Governor in Council that the work cannot be proceeded with without the employment of such aliens.'

This provision is manifestly *ultra vires*, and therefore, harmless, and inasmuch as the undersigned has come to the conclusion that he ought not to recommend disallowance for the other reasons stated in this report, he does not consider it expedient to do so, because of the obvious invalidity of this provision relating to aliens.

The undersigned recommends, therefore, that the statute be left to such operation as it may have, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia and to the president of the said company for their information.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

Report of the Honourable the Minister of Justice upon Chapter 25 approved by His Excellency the Governor General in Council on the 19th January, 1902.

DEPARTMENT OF JUSTICE, OTTAWA, 26th December, 1901.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his report upon the British Columbia Fisheries Act, 1901, 1 Edward VII., chapter 25, intituled: 'An Act respecting the fisheries of British Columbia.'

It is enacted by section 9 that: 'The Board of Fishery Commissioners, with the approval and authority of the Lieutenant-Governor in Council, may from time to time make regulations for the better management, conservation and regulation of all fisheries in respect of which the legislature of British Columbia has authority to legislate, to prevent or remedy the destruction and pollution of streams, to regulate and prevent fishing, to prevent the destruction of fish, and to forbid fishing except under the authority of leases or licenses, and may from time to time vary, amend, alter or repeal all and every such regulation as may be found necessary or deemed expedient for the purpose of carrying the provisions of this Act into effect, and all regulations so made shall have the same force and effect as if herein contained and enacted; and every offence against any such regulation may be stated as having been made in contravention of this Act, notwithstanding that such regulations extend, vary or alter any of the provisions of this Act respecting the places or modes of fishing, or the times specified as prohibited or close seasons.'

Section 12 provides that no person shall fish for, take, catch or kill from or in provincial waters, except so far as may be necessary to secure a supply for his own use, by any means other than angling, any fish which inhabits such waters without first having obtained a lease or license signed by the commissioners or their deputies.

Section 13 prohibits any person without lawful excuse from buying, selling or possessing any fish caught or killed in provincial waters at a time or in a manner prohibited by law.

Section 14 authorizes the commissioners to issue fishing leases or licenses for fisheries and fishing, to be carried on in provincial waters, subject always to such regulations, conditions and restrictions as may from time to time be made, ordered, established or fixed in that behalf by the commissioners, approved by the Lieutenant Governor in Council.

Section 19 empowers the board of commissioners to appoint guardians to prevent the taking or killing of fish by illegal means or in an illegal manner or at prohibited times.

Section 27 provides that no fish or fish spawn shall be taken in any manner from provincial waters for the purpose of stocking, artificial breeding or for scientific purposes without a written permit from the commissioners.

Section 28 requires every person fishing in provincial waters to permit the inspection and examination of the fish taken by him or in his possession and the implements by which the fish were taken, and authorizes search if the person refuses to allow such inspection and examination.

Section 32 empowers the [illegible] commissioners to determine [illegible]

Section 33 requires [illegible]

Section 34 authorizes [illegible] to determine disputes relative to the position and [illegible]

Section 36 prohibits [illegible] or shipping or transp[illegible] [illegible] prohibited by [illegible]

Section 53 provides [illegible] granted by the Board of [illegible] to any person who wishes to plant or [illegible] oyster beds in any of the [illegible] harbours, creeks or rivers of the province, and that the holder of any such [illegible] such shall have the exclusive right of the oysters [illegible] planted on the [illegible]

Section 59 enacts [illegible] person who shall set up, use or employ any fish trap, stationary [illegible] of a like nature for the taking of salmon, [illegible] such traps in provincial waters [illegible] or kill [illegible] lations under it shall apply to [illegible]

It is provided that this Act and [illegible] and rights of fishing, and the matters [illegible] thereto in respect of which the legislature of British Columbia has authority to legislate for the purposes of this Act. The terms 'water' or 'waters' or 'provincial water' or 'provincial waters' are defined to mean and include 'such of the waters of the sea or of any bay or inlet of the sea, or of any lake, river, stream or water course wholly or partially within the province, over the subject of which the legislature of this province has authority to legislate for the purpose of this Act, and whether flowing over or covering Crown lands or not, but shall not include any waters in which fish are propagated and preserved by the owner or tenant of the land covered by such waters.'

The undersigned has referred to Section 53 because it authorizes the Board of Commissioners to grant special licenses and leases to plant oyster beds in the harbours of the province. These so far as they are public harbours belong to the Dominion and are not subject to provincial legislative authority. The section is, therefore, to that extent *ultra vires*.

The remaining sections above [illegible] and perhaps some of the other provisions of the Act are objectionable as being fishery regulations. This Act is not unlike the Act respecting the fisheries of Ontario, 63 Victoria, Chapter 50, as amended by the Ontario Act of 1901, a number of the provisions in question having apparently been copied from these Acts. In his report upon the Ontario Act approved by Your Excellency on 11th May last, the undersigned stated that it had been finally determined that the enactment of fishery regulations and restrictions is within the exclusive competence of parliament and not within the province of provincial legislatures. The kind of legislation which the provinces may pass with respect to fisheries under their authority over property and civil rights or the management and sale of public lands, has also been indicated by the Judicial Committee. It refers to property, its disposition and the rights to be enjoyed with respect to property, and it is expressly held that such legislative authority does not extend to any restrictions or limitations by which public rights or fishing are sought to be limited or controlled. The undersigned stated that he would have considered it necessary to recommend disallowance of both these Acts were it not for the fact that the local government had expressed its willingness to make further amendments at the next session of the legislature to repeal the objectionable provisions, and Your Excellency's Government received a formal assurance from the Government of Ontario that such amendments would be made. The undersigned considers that the particular provisions of the statute now in question to which he has referred, are principally regulations controlling or relating to the manner or times of fishing, the appliances with which fish may be taken, or the manner of disposing of them, having in view the prohibition of the unlawful taking or killing of fish. Large powers are also conferred upon the fishery commissioners, with the approval of the Lieutenant Governor in Council, to make regulations respecting the

[illegible]

R[illegible]

DAVID MILLS,
Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 17th January, 1902.

DEPARTMENT OF JUSTICE, OTTAWA, 27th December, 1901.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the following statutes of British Columbia, passed in the 1st year of His Majesty's reign (1901), viz.:—

Chapter 32, 'An Act to authorize the loan of five million dollars for the purpose of aiding the construction of railways and other public works.'

Section 10 of this Act authorizes the Lieutenant Governor in Council to enter into agreements with any person or company undertaking the construction of any railway to which a subsidy is hereby attached, which may be necessary or convenient for the due construction and operation of such railway, which agreements shall, in each instance, in addition to other matters therein provided for, contain the provisions set forth in the said section. These include among others the following:

'(*e.*) That the Lieutenant Governor in Council shall have absolute control of the freight and passenger rates to be charged by the railway, and that, notwithstanding, and in the event of the railway being or becoming subject to the jurisdiction of the Dominion Government, the same shall be assumed by the company, and shall be deemed a contract between the province and the company.'

'(*i.*) That no aliens shall be employed on the railway during construction unless it is demonstrated to the satisfaction of the Lieutenant Governor in Council that the work cannot be proceeded with without the employment of such aliens.'

Chapter 65, 'An Act to amend the "Arrowhead and Kootenay Railway Company Act, 1898."'

Chapter 69, 'An Act to incorporate the Coast-Kootenay Railway Company, Limited.'

Chapter 70, 'An Act to amend the "Columbia and Western Railway Company Act, 1896."'

Chapter 71, 'An Act to incorporate the Comox and Cape Scott Railway Company.'

Chapter 72, 'An Act to incorporate the Crawford Bay Railway Company.'

Chapter 77, 'An Act to incorporate the Imperial Pacific Railway Company.'

Chapter 78, 'An Act to incorporate the Kamloops and Atlin Railway Company.'

Chapter 79, 'An Act to incorporate the Kootenay Central Railway Company.'

Chapter 81, 'An Act to incorporate the Midway and Vernon Railway Company.'

Chapter 83, 'An Act to incorporate the Queen Charlotte Islands Railway Company.'

Chapter 84, 'An Act to incorporate the Vancouver and Grand Forks Railway Company.'

Chapter 85, 'An Act to incorporate the Victoria Terminal Railway and Ferry Company;' and

Chapter 87, 'An Act to incorporate the Yale-Northern Railway Company.'

Each of these statutes contains a provision in effect that no aliens shall be employed on the railway during construction unless it is demonstrated to the satisfaction of the Lieutenant Governor in Council that the work cannot be proceeded with without the employment of such aliens. Each of these statutes contains the further provision that the Act shall not come into force and effect until such time as the company shall give security to the satisfaction of the Governor in Council.

'(1.) That the Lieutenant Governor in Council shall have the right from time to time to fix maximum rates for freight and passenger traffic, and the company shall not charge rates higher than those fixed.

'(2.) That in the event of Dominion legislation bringing this railway company under the exclusive jurisdiction of the parliament of Canada, the foregoing conditions shall be carried out by the company so incorporated, as a contract and obligation of said company, prior to any other charge thereon.'

Chapter 68, intituled 'An Act to incorporate the Chilkat and Klehini Railway and Navigation Company,' and

Chapter 80, intituled 'An Act to incorporate the Lake Bennett Railway.'

Each of these chapters contains the provision above quoted with regard to the security to be given to the satisfaction of the Lieutenant Governor in Council regarding the fixing of maximum rates, but they do not contain the clause with respect to aliens.

Chapter 85. In addition to the objectionable clauses which have been stated, this Act contains a provision empowering the company to adopt and carry into effect the draft agreement recited in and incorporated with a Bill passed by the municipal council of the City of Victoria, copy of which is set forth in the schedule to the Act. This agreement provides among other things that no Chinese or Japanese person shall be employed on any of the works or undertakings agreed to be carried out by the company, or in the operation of such undertakings after construction, and in the event of any such Chinese or Japanese person being so employed, the company shall forfeit and pay to the corporation the sum of $50 per day for every person so employed.

Chapter 86, 'An Act empowering the corporation of the city of Victoria to lease the market building premises and otherwise carry into effect the "Victoria Terminal Railway By-law, 1900."'

This statute declares that the Victoria Terminal Railway By-law, 1900, which is the by-law already referred to, was duly passed, and shall be absolutely valid and binding upon the corporation according to the terms thereof, and the council is empowered to carry out and give force and effect to all the provisions, agreements, stipulations and conditions in the said by-law set forth. The by-law recites the agreement containing the clause with respect to Chinese or Japanese already mentioned.

Dealing first with the [illegible]sions above quoted with regard to the Lieutenant Governor in Council fixing maximum rates for freight and passenger traffic, and what shall happen in the event of Dominion legislation bringing these railway companies under the exclusive jurisdiction of parliament, the undersigned has difficulty in understanding what is intended by the legislature. The words have already been quoted. They would have to be construed having regard to the Dominion legislation whatever it might be, affecting the company, if its railway were brought under the exclusive jurisdiction of parliament. In so far as, consistently with such legislation, the provincial statute incorporating the company might operate, the original charter would probably

remain in operation, and the provision in question would give it no additional effect. In so far, however, as it is attempted to follow these companies into Dominion jurisdiction, and govern them by provincial enactment intended to come into effect after they have passed beyond the authority of the province, the legislation can, in the opinion of the undersigned, have no effect.

The undersigned has already stated his view upon such legislation with regard to a similar clause in the British Columbia Acts of 1899, vide report of undersigned approved by Your Excellency on 14th December, 1899. So long as these railways are subject to local jurisdiction there can be no objection to the clause now in question. It is not necessary to consider whether or not parliament is likely to take any action in the matter. It is certain that if at any time these railways should fall within the exclusive jurisdiction of parliament, previously existing enactments with regard to them can have effect only in so far as parliament intends, and, therefore, whatever the construction of these clauses or the intention of the legislature with regard to them may be, it seems to the undersigned harmless so far as Dominion interests are concerned. The undersigned would not, therefore, recommend disallowance of any of these Acts upon the ground solely that they contain the clauses upon which he has already commented.

The undersigned has received a communication from the Japanese Consul at Vancouver objecting to the clause above quoted with respect to aliens, particularly with regard to the legislation respecting the Victoria Terminal Railway and Ferry Company, and he points to the clause respecting the Japanese contained in the agreement set forth in the above-mentioned by-law. It is unnecessary for the undersigned to review here the correspondence which has taken place during the last three years between the Imperial government, Your Excellency's government and the government of British Columbia with regard to legislation respecting the Japanese. A number of statutes have been disallowed, and the government and legislature of the province are well aware of the policy of Your Excellency's government with regard to such legislation and the reasons for it. Heretofore exception has been made with respect to Acts incorporating private companies because of the inconvenience which might arise if these statutes were disallowed after the companies had been organized and commenced operations, but in the report of the undersigned, approved 24th April, 1900, to Your Excellency in Council, the undersigned referring to the disallowance of previous Acts of British Columbia for the same reason, and to the Acts then under review, stated: 'Inasmuch, however, as certain statutes of British Columbia were disallowed in 1899 on account of provisions attempting to render illegal the employment of Japanese, and as certain other statutes will, if this report be approved, soon be disallowed for the same reason, the undersigned considers that by the time of another session of the legislature it will be safe to hold that the views of Her Majesty's government and of this government with regard to anti-Japanese legislation, are generally and sufficiently understood in British Columbia, and, therefore, it may well be considered, in case of this objectionable section appearing in future Acts of a corporation, or Acts affecting private companies, that these companies' Acts ought not to have exceptional treatment. The applicants may be held to have obtained the legislation at their own risk, and persons dealing with corporations incorporated by charters attempting to impose disabilities upon aliens may also be held to have acted with notice of the views entertained by Your Excellency's government, and of the action which would probably be taken with respect to such measres.'

A copy of this report was duly communicated to the provincial government, and in face of the warning so given, the undersigned does not consider that any further exception should be made. The statutes now in question contain all the objectionable provisions which led to the disallowance of the former Acts. The objections are in the present instance more serious, inasmuch as not only Japanese, but all aliens, are disqualified from employment to the extent mentioned in these Acts. The subject of aliens is clearly within the exclusive authority of parliament.

Immigration is also within Dominion jurisdiction, and it has been, and is, the policy of Your Excellency's government to promote immigration, large sums of money being annually expended from the Dominion treasury to that end. The efforts of Your Excellency's government would, however, be certainly paralyzed if the immigrant, upon coming to Canada, is to find the way of employment closed to him by provincial legislation. The policy of these enactments is so contrary to that of Your Excellency's government, and the enactments themselves so manifestly *ultra vires*, that the undersigned considers that no course is open to Your Excellency's government, consistently with the public interest, but the exercise of the power of disallowance, unless, indeed, the provincial legislature repeal these provisions.

The undersigned, therefore, recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia, with a request that he inform Your Excellency's government as soon as convenient whether these Acts will be amended within the time limited for disallowance by repealing the clauses affecting aliens, and further as to the legislation respecting the Victoria Terminal Railway and Ferry Company, by reforming the by-law and agreement therein referred to, so as to do away with the provisions relating to Japanese.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

Report of the Honourable the Minister of Justice upon Chapter 46, approved by His Excellency the Governor General in Council on the 10th January, 1905.

DEPARTMENT OF JUSTICE, OTTAWA, December 27th, 1901.

To His Excellency the Governor General in Council :

The undersigned has the honour to submit his report upon the Revenue Tax Act, 1901, of the statutes of British Columbia, 1 Edward VII., chapter 46, intituled 'An Act to provide for the collection of a tax on persons.'

This Act requires every male person, as defined by the Act, in the province of British Columbia to pay an annual revenue tax of $3, subject to be increased as provided by the Act, which tax is to fall due from and after January 2nd in each year, and shall be payable in advance for the use of His Majesty in the right of the province. It is provided, however, that every merchant, farmer, trader or employer of labour shall on demand of the assessor and collector pay the annual tax for every male person in his employ, not only at the time when such demand is made, but also from time to time for every male person in his employ during the year for which the tax is payable, and may deduct the amount so paid on account of any such male person from the amount of salary or wages due or to become due to any such male person upon the production or delivery of the receipt for such tax for such person. It is provided that every such merchant, farmer, trader or employer of labour shall be primarily liable for the said tax in respect of every male person in his employ, and that he shall be liable to all the provisions of the Act with regard to such persons in his employ.

It is not clear to the undersigned whether in the case of an employee the statute intends that payment should be enforced directly against him. Express provision is however, made for enforcing payment of the tax imposed in respect of such employee against the employer.

It seems clear to the undersigned that this method of taxation, so far as the employer in respect of those in his employ is concerned, is not direct taxation. The power of a local legislature to tax arises under the 2nd and 9th enumerations of section 92 o

the British North America Act, viz.: '(2) Direct taxation within the province in order to the raising of a revenue for provincial purposes;' and '(9) Shop, saloon, tavern and auctioneer, and other licenses in order to the raising of a revenue for provincial, local or municipal purposes.' No question of licenses is involved in this Act, and, therefore, in so far as the Act authorizes indirect taxation, it is *ultra vires*. A definition quoted by the highest judicial authority as embodying an understanding of the most obvious indicia of direct and indirect taxation, which is a common understanding, and likely to have been present to the minds of those who passed the Act of Union, is the definition of John Stuart Mill, as follows: 'Taxes are either direct or indirect. A direct tax is one which is demanded from the very persons who it is intended or desired should pay it. Indirect taxes are those which are demanded from one person, in the expectation and intention that he shall indemnify himself at the expense of another.'

The project of taxing the employer in respect of his employees, and authorizing him to withhold the amount of the tax so paid from the wages due to the employee, is not one by which the tax is demanded from the persons who it is intended or desired should pay it, but rather by which the tax is demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another. It would be perhaps hard to find a more apt illustration of a tax indirectly levied than that furnished by this legislation. The undersigned entertains no doubt that sections 5, 6 and 7, and the other provisions of the Act affecting the employer of labour as such should be repealed, and he recommends that inquiry be made of the provincial government upon communication of a copy of this report as to whether such amendments will be made within the time limited for disallowance.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

Report of the Honourable the Minister of Justice upon Chapter 10, approved by His Excellency the Governor General in Council on the 25th January, 1902.

DEPARTMENT OF JUSTICE, OTTAWA, 27th December, 1901.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Companies' Act, 1897, amendment Act, 1901, of British Columbia, 1 Edward VII., chapter 10, intituled: 'An Act to amend the "Companies' Act, 1897."'

Section 2 is as follows:—'The term "Extra-provincial Company," under the "Companies' Act, 1897," shall be deemed to have included and shall include every corporation, company, association or society incorporated under any investment and Loan Societies Act, Loan Corporation Act, or Building Societies Act, or any similar Act thereto of the United Kingdom, or of the Dominion of Canada, or of [illegible] province of Canada, or of any province of Canada (excepting the province of British Columbia), and having gain for its purpose and object, and being empowered to lend money to others than its members only, and any such corporation, company, association or society having obtained a license under said "Companies' Act, 1897," shall be deemed to come within the "Extra-provincial [illegible] and Loan Societies Act, 1900."'

Section 3 provides that the fee to be paid by any such corporation, company, association or society for such license shall be $250.

Section 4 enacts that on or about [illegible] every corporation, company, association or society mentioned in section 2 licensed under [illegible] 1897 shall [illegible] of the Provincial Secretary [illegible]

ment required to be made during the preceding year by the Act, statute, ordinance or other provision of law under which it was incorporated or is governed, and in default shall be liable to a penalty not exceeding $25 for every day during which such default continues. So far as this latter provision is concerned it is, in the opinion of the undersigned not justified in the execution of any power of taxation vested in the legislature. If a Dominion company be by its charter or Act of incorporation required to file returns at the office of the Provincial Secretary, it must be subject in case of default to the Dominion legislation applying in such cases, but a provincial legislature is not authorized to provide any additional sanction, nor is it authorized as a measure of taxation, to impose a penalty for not filing returns upon which the tax does not in anywise depend.

While not disputing the power of a legislature to tax a company incorporated by the Parliament of Canada, the undersigned considers that Dominion companies ought not to be subject to differential treatment; and that it is the duty of Your Excellency's government to see that taxes are not imposed for provincial purposes upon Dominion companies where the like taxes are not in similar cases imposed upon provincial companies. This Act, ought, therefore, to be amended by repealing section 4, and by either repealing sections 2 and 3 or amending them so as to provide that no license, fee or tax shall be imposed or exigible under the statute as against a Dominion corporation except in so far as under the like circumstances, a similar tax or license fee is similarly chargeable by the law of British Columbia as against companies incorporated by or under the authority of a statute of that province.

The undersigned has the honour to recommend that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia with a request that he inform Your Excellency's government as soon as convenient whether this Act will be so amended within the time limited for disallowance.

Respectfully submitted.

C. FITZPATRICK.

Minister of Justice.

Report of the Honourable the Minister of Justice upon Chapter 37, approved by His Excellency the Governor General in Council on the 10th January, 1902.

DEPARTMENT OF JUSTICE, OTTAWA, 28th December, 1901.

To His Excellency the Governor General in Council:

There has been referred to the undersigned a communication from Mr. R. F. Tolmie, Secretary of the British Columbia Mining Association, inclosing a petition (copy herewith) addressed to Your Excellency, from the British Columbia Mining Association, praying for the disallowance of chapter 37 of the statutes of British Columbia, 1901, intituled: "An Act to amend the "Inspection of Metalliferous Mines Act" and amending Act."

The undersigned recommends that a copy of the petition and of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia, requesting that his government express their views upon the matter for the information of Your Excellency's government.

Respectfully submitted,

DAVID MILLS,

Minister of Justice.

Petition of the British Columbia Mining Association to His Excellency the Governor General in Council re Chapter [illegible].

To His Excellency the Governor General in Council:

The petition of the British Columbia Mining Association sheweth as follows:

1. That under and by virtue of the provisions of section 9 of Bill No. 28, entitled: 'An Act to amend the inspection of Metalliferous Mines Act and amending Act,' passed at the last session of the Legislative Assembly of the province of British Columbia, it is provided, 'General Rule 8, as set forth in section 25 of the said Act is hereby repealed and the following substituted therefor: In every mine where hoisting is employed either for the carriage of persons or minerals, the following code of mine signals should be used: (Here follows the schedule as set out in the said Bill).

2. That this association took occasion before the passing of said Act by the Legislative Assembly of British Columbia to protest against the passing of said Bill for the following reasons amongst others:

(*a.*) That in the opinion of the members of this association no good reason presents itself for repealing General Rule 8, as set forth in section 25 of the Mines Metalliferous Inspection Act, being chapter 61, revised statutes of British Columbia, and to make the additions provided for in section 9 of said Bill No. 28, will only lead to confusion and, consequently, to accidents.

(*b.*) That in the opinion of the members of this association such opinion being based on long and wide experience, it is impossible to devise by legislation a uniform code of signals adaptable to all mines without interfering with safety and efficiency.

(*c.*) That from the many years of mining experience which the members of this association have had in different parts of the world, they are unable to recall any accidents in mines that would have been prevented by the adoption of a uniform code of signals. In the opinion of the members of this association the addition to the code provided for by section 9 of said Bill No. 28, will not in any way increase the safety of operating engines and skips, but, on the contrary, by their complex nature and undue length they will be [illegible], and their use will be out of the question, having due regard to the safety of employees.

(*d.*) That in the [illegible] made upon the government for the changes in the law contemplated by section 9 of said Bill No. 28, the members of this association are at a loss to understand why such unworkable conditions should be imposed upon mine operators, especially in view of the fact that from the experience of the members of this association, no legislation of a mines act of such an extensive nature as that provided for in section 9 of Bill No. 28 has been ever found beneficial or extended to the safety of employees.

3. That by section 25 of said chapter 134, revised statutes of [illegible], it is provided that 'The following general rules shall, so far as may be reasonably practicable, be observed in every mine to which this Act applies.' In the opinion of the members of this association (and they state the same here as a matter of fact), based upon long years of experience, the code of mine signals set out and provided in said section 9 of Bill No. 28 cannot be observed in the mines to which the said Act applies, or the same are not reasonably practicable.

Your petitioners, therefore, pray that for the reasons above stated the said Bill No. 28, being 'An Act to amend the Inspection of Metalliferous Mines Act and amending Act,' be disallowed by Your Excellency in Council.

And your petitioners as in duty bound will ever pray.

THE BRITISH COLUMBIA MINING ASSOCIATION.

Per R. L. Tolmie,
General Secretary.

Report of the Honourable the Minister of Justice upon Chapter 80, approved by His Excellency the Governor General in Council on the 10th day of May, 1902.

DEPARTMENT OF JUSTICE, OTTAWA, 3rd May, 1902.

To His Excellency the Governor General in Council:

The undersigned has had under consideration chapter 80 of the statutes of British Columbia, passed in the first year of His Majesty's reign, 1901, and intituled, 'An Act to incorporate the Lake Bennett Railway Company.' Reference has already been made to this Act in a report upon these statutes by the predecessor in office of the Undersigned. It is provided by section 3 that the company may lay out, construct and operate a railway from a point at or near the headquarters of Dyea River, to a point at or near Lake Bennett, thence to the 60th parallel of latitude. The undersigned observes that the territory between the ocean and that region which is proposed to be traversed by the line of railway thus chartered is now in dispute between the United States and the Dominion of Canada, and it is considered inexpedient pending the settlement of that dispute to permit the construction of railways which may complicate and increase the difficulty already existing. The authority of a provincial legislature over railways is limited to such as are local in their character and which do not connect the province with any other or others of the provinces, or extend beyond the limits of the province. It is, in the opinion of the undersigned, therefore, very doubtful whether it is competent to the legislature of British Columbia to authorize the construction of this railway from the Dyea River to the northern boundary of the province, and the attempt to keep the traffic of such a railway under the control of the local government, notwithstanding any legislation of parliament upon the subject, is also objectionable. These two provisions construed together may furnish reason for disallowance of the Act, but in addition to these reasons the undersigned does not consider it in the public interest, or consistent with the policy of Your Excellency's government that the Act should remain in operation.

He recommends, therefore, that it be disallowed, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of British Columbia, and to Mr. King, who is named as one of the incorporators of the company, for their information.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

Proclamation Disallowing Chapter 80.

AT THE GOVERNMENT HOUSE AT OTTAWA, THE 10th day of May, 1902.

PRESENT:

His Excellency the Governor General in Council.

Whereas, the Lieutenant Governor of the province of British Columbia, with the Legislative Assembly of that province, did on the 11th day of May, 1901, pass a statute which has been transmitted, chapter 80, intituled: 'An Act to incorporate the Lake Bennett Railway.'

And, whereas the said statute has been laid before His Excellency the Governor General in Council, together with a report from the Minister of Justice recommending that the same be disallowed;

Therefore, His Excellency the Governor General in Council is pleased to declare his disallowance of the said statute, and the same is hereby disallowed accordingly.

Whereof the Lieutenant Governor of the province of British Columbia and all other persons whom it may concern are to take notice and govern themselves accordingly.

JOHN J. McGEE,
Clerk of the Privy Council.

I, Sir Gilbert John Elliot, Earl of Minto, Governor General of Canada, do hereby certify that the statute passed by the legislature of the province of British Columbia on the 11th day of May, 1901, chaptered 80, and intituled: 'An Act to incorporate the Lake Bennett Railway,' was received by me on the 24th day of June, 1901.

Given under my hand and seal this 10th day of May, 1902.

MINTO.

Report of the Honourable the Minister of Justice upon chapter 45, approved by His Excellency the Governor General in Canada on the 31st May, 1902.

DEPARTMENT OF JUSTICE, OTTAWA, 16th May, 1902.

To His Excellency the Governor General in Council:

The undersigned has had under consideration chapter 45 of the Acts of British Columbia, 1 Edward VII., (1901), intituled: 'An Act respecting certain railway land grants.' This Act has already been mentioned in the report of the predecessor in office of the undersigned, dated 31st December last. The Act recites the intention of the legislature and the government, that grants of land which had been made to railway companies to aid in the construction of the railways, should be subject to the provisions of the Land Act and its amendments and re-enactments, reserving to the Crown a royalty upon timber and other wood, and conferring powers for the enforcement of such royalty. It recites that it is desirable specifically to provide and declare that the Land Act applied and now applies to lands granted as aforesaid. It provides that all grants of Crown lands made to railway companies by the Lieutenant Governor in Council before the passing of the Act, in aid of, or as a subsidy for, construction of railways, were subject to the provisions of the Land Act with respect to the reservation of a royalty to the Crown upon all timber and other woods cut upon lands to be granted by the Crown, and with respect to the power conferred for the enforcement of such royalty. The Act declares that such grants of lands were subject to the said provisions as from time to time amended, and re-enacted, and are subject to such provisions as they appear in the Land Act and its amendments in force at the passing of the Act. It further declares that the provisions reserving a royalty to the Crown are not to be considered as taxation within the meaning of any provision exempting a railway company or its property, real or personal, from taxation.

A further petition on behalf of the Nelson and Fort Sheppard Railway Company and the Kaslo and Slocan Railway Company has been presented to the undersigned, and the undersigned has heard counsel in behalf of the prayer of the petitioners for disallowance. Copy of the petition is submitted herewith.

The undersigned has attentively considered the allegations and grounds raised by the petitioners. The authority of the legislature to enact the statute in question is beyond dispute. Such authority is in fact not questioned. The undersigned does not consider it necessary to determine whether the Act is merely declaratory of the rights of the parties affected, as urged on behalf of the government of British Columbia, or whether it imposes burdens upon the lands in question to which they were not previously subject. The petitioning companies contend that under previous legislation, and by the grants under which they held, the timber and wood cut upon these lands was

not subject to any tax or royalty, and that the imposition thereof as effected by the statute seriously diminishes the value of the property. It appears that litigation was pending between the government and the petitioners at the time of the passing of the Act, with regard to the petitioners' liability to pay these royalties, and no doubt a very strong case is made out by the petitioners in support of the [illegible] should have allowed the existing law to operate, and should not [illegible] legislate so as to diminish or affect existing rights.

The undersigned cannot withhold expressing his disapprobation of measures of this character, but there is a difficulty about Your Excellency in Council giving relief in such cases, without affirming a policy, which requires Your Excellency's government to put itself to a large extent in the place of the legislature, and judge of the propriety of its acts, relating to matters committed by the constitution to the exclusive legislative authority of the province. So far as the Nelson and Fort Sheppard Railway is concerned, it is to be observed that there was a Dominion Act passed in 1893 declaring the railway to be a work for the general advantage of Canada, and its provincial charter was thereby confirmed by parliament. Afterwards the company mortgaged its railways and land grants to secure payment of its bonds, and the bondholders are now affected by the provincial statute, in so far as it imposes a charge upon the property or the wood cut thereon which did not previously exist. The undersigned has considered whether the Act therefore should not be held to affect rights sanctioned by Dominion legislation, and to interfere with the policy of the Dominion. He has concluded, however, that inasmuch as it is competent to the legislatures to tax the property of Dominion corporations, and inasmuch as the Act respecting these railway land grants, if not declaratory, is a taxing Act, it would not be proper for Your Excellency on that account to exercise the power of disallowance. The undersigned feels unable, therefore, to make any recommendation other than that the Act be left to such operation as it may have, and that a copy of this report, with a copy of the petition referred to, be transmitted to the Lieutenant Governor of British Columbia, with the recommendation on behalf of Your Excellency's government that the matter be further considered with the view if possible to restore the rights of the petitioners as they existed previously to the passing of the Act, and upon the faith of which the expenditures of the companies are alleged to have been made, and their obligations incurred.

Respectfully submitted,

C. FITZPATRICK,
Minister of Justice.

Report of the Honourable the Minister of Justice upon Chapter 46, approved by His Excellency the Governor General in Council on the 12th June, 1902.

DEPARTMENT OF JUSTICE, OTTAWA, 9th June, 1902.

To His Excellency the Governor General in Council:

The undersigned, referring to the despatch of the Lieutenant Governor of British Columbia of 29th ult., no. [illegible], observes that with regard to chapter 46 of the British Columbia Act, 1901, intituled: 'An Act to provide for the collection of a tax on persons,' the provincial government refers to correspondence with the undersigned. The Attorney General of British Columbia wrote Mr. Mills on 31st January last, referring to Mr. Mills' report to Your Excellency upon this statute of 27th December, 1901. The Attorney General stated as follows:—

'These provisions in almost their present form were first enacted by sections 6, 7 and 8, chapter 24 of 1881, and afterwards re-enacted by sections 8 and 9 of chapter 110 of the consolidated statutes of 1888, and by sections 5, 6 and 7 of chapter 167 of the revised statutes of 1897.

'You will, therefore, see that this [illegible] the Dominion executive has allowed [illegible]

'I have no doubt that [illegible] tion of poll tax from the Chinese. As you are no doubt aware, we have in this province quite a large number of Chinese and Japanese labourers. It [illegible] to identify these men, and so they can evade payment of this tax. Very few of them possess any property that can be reached so the [illegible] towards the revenue of the province is by a poll tax collected direct from the [illegible]

'I feel confident that you are not [illegible] the way of our compelling these people to contribute a reasonable amount [illegible] maintenance of government in the province in which they make the money which they forthwith export to China.

'In your report I notice you make this observation: "It is not clear to the undersigned whether in the case of an employee the statute intends that payment should be enforced directly against him." I submit it is reasonably clear that a collector may proceed either against the employer or the employee for the amount of the tax. Section 3 imposes the tax upon every male person and subsection (2) of section 5, in my opinion recognizes the liability of the employee to pay the tax, and provides that in the event of his doing so, any liability of the employer shall cease. I would strongly urge upon you this view of the statute, that it imposes a direct tax upon every male above a certain age; that his liability to pay does not cease upon being employed by another, but that in that event by a statutory attachment of the "salary or wages due or to become due to such male person" (S. 5, subsection 1) the employer becomes liable, out of such salary or wages, to pay the debt due to the Crown by the employee, and that the employers payment of the tax discharges *pro tanto* his liability to his employee.

'I consider it quite competent for a provincial legislature to enact that all moneys due or to become due from an employer shall be attached until a tax debt due from the employee to the Crown or to a municipality shall have been discharged, and that out of such moneys the employer shall pay the tax.

'It may be that all the provisions of the Act are not as well drawn as they might be, but I submit that the above is a fair interpretation to put upon the statute as a whole. You lay stress in your report upon the clause in subsection (1) of section 5, that "Every such merchant, farmer, trader or employer of labour, shall be primarily liable for the said tax in respect of every male person in his employ at any time during the year for which said tax is payable, and until the tax is paid in respect of such person." That clause it seems to me may be fairly interpreted to refer to the employers' liability as garnishee and to be a direction to the collector to have recourse in the first instance to the employer instead of wasting time and money collecting from the employee.

'If you cannot adopt this view, I am prepared to submit legislation either repealing the clause or making it clear that it has the meaning I attribute to it. As the [illegible] of this Act or the striking out from it of the attachment provisions would seriously affect our already inadequate revenue, I ask that you reconsider the Act, and that you do not have it disallowed at least until I fail to remove your objections to it.'

The undersigned having considered these observations of the Attorney General thereupon, the Deputy Minister of Justice, by direction of the undersigned, wrote Mr. [illegible] under date of February 21st last as follows:

'Referring to your letter of 31st ultimo, addressed to Mr. Mills, with regard to the Revenue Tax Act, 1901, of British Columbia, I observe that there has been such legislation in force in British Columbia since 1884, and I am not aware that any question has come before the courts with regard to it. It would seem, therefore, that the people of the province must have largely acquiesced in the enforcement of these provisions. The Minister, however, entertains no doubt that they are *ultra vires* to the extent stated in his predecessor's report, approved on 10th ultimo. Any employer objecting to the validity of the Act may, of course, at any time have the question

determined by the courts, and in view of the fact which you state, that previous statutes were not disallowed, he is not inclined to recommend extreme measures with regard to the present Act. He thinks, however, that it would be worth while for you to consider whether a more constitutional means cannot be devised for ensuring the collection of the tax, as it is not unlikely, particularly as attention has now been called to the invalidity of the statute, that litigation may arise which will involve the province in costs, and otherwise prove embarrassing.

'Awaiting a reply to the official despatch, the Minister does not propose at present to make any further recommendation to His Excellency.'

The undersigned, considering the communication of the Attorney General and the aforesaid reply, and for the reasons therein stated, recommends that the Act in question be left to such operation as it may have.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 12th June, 1902.

DEPARTMENT OF JUSTICE, OTTAWA, June 9th, 1902.

To His Excellency the Governor General in Council:

There has been referred to the undersigned a despatch of the Lieutenant Governor of British Columbia, dated 29th ultimo, transmitting a copy of a minute of the Executive Council of that province, dated 28th ultimo, approving a report of the Attorney General with regard to certain statutes passed by the Provincial Legislature, 1901, to which objections have been raised by Your Excellency's Government.

The undersigned observes that as to the following statutes the provincial government recommend the amendments suggested by Your Excellency's Government as alternatives to disallowance, viz.:

Chapter 10, 'An Act to amend the Companies Act, 1897;'

Chapter 25, 'An Act respecting the fisheries of British Columbia;'

Chapter 32, 'An Act to authorize a loan of five million dollars for the purpose of aiding the construction of railways and other public works;'

Chapter 65, 'An Act to amend the Arrowhead and Kootenay Railway Company Act, 1898;'

Chapter 69, 'An Act to incorporate the Coast Kootenay Railway Company, Limited;'

Chapter 70, 'An Act to amend the Columbia and Western Railway Company Act, 1895;'

Chapter 71, 'An Act to incorporate the Commox and Cape Scott Railway Company;'

Chapter 72, 'An Act to incorporate the Crawford Bay Railway Company;'

Chapter 77, 'An Act to incorporate the Imperial Pacific Railway Company;'

Chapter 78, 'An Act to incorporate the Kamloops and Atlin Railway Company;'

Chapter 79, 'An Act to incorporate the Kootenay Central Railway Company;'

Chapter 81, 'An Act to incorporate the Midway and Vernon Railway;'

Chapter 83, 'An Act to incorporate the Queen Charlotte Islands Railway Company;'

Chapter 84, 'An Act to incorporate the Vancouver and Grand Forks Railway Company;'

Chapter 87; 'An Act to incorporate the Yale Northern Railway Company.'

The time for disallowance of these statutes will expire on 23rd instant. The legislature of British Columbia has been for some time in session, yet it does not appear from the despatch that the amending Acts have been passed, although it is distinctly stated that the provincial government recommends such amendments.

The undersigned considers that Your Excellency's government should have a definite assurance previous to 23rd instant, that these recommendations have been carried into effect, and he recommends with regard to the various Acts above mentioned that a telegraph despatch be sent to the Lieutenant Governor of British Columbia, acknowledging his despatch of 29th ultimo, with the inclosures, stating that the power of disallowance will not be exercised if the amendments proposed are sanctioned within the time limited for disallowance; that the matter is, however, of so much consequence that the action of the legislature cannot be permitted to remain in doubt, and that it will be necessary for Your Excellency's government to take further action unless on or before the 23rd instant Your Excellency's government is advised that the necessary amendments have been finally passed.

Chapter 68, 'An Act to incorporate the Chilkat and Klehini Railway and Navigation Company,' and

Chapter 80: 'An Act to incorporate the Lake Bennett Railway Company.'

The latter of these Acts has recently been disallowed for the reasons stated in a previous report of the undersigned.

As to Chapter 68, the undersigned has nothing to add to the report of his predecessor of 27th December last.

Chapter 85, 'An Act to incorporate the Victoria Terminal Railway and Ferry Company, and

Chapter 86, 'An Act empowering the corporation of the city of Victoria to lease the market building premises and otherwise carry into effect the Victoria Terminal By-law, 1900.'

With regard to these two Acts, it is stated in the provincial despatch that the Attorney General has requested the council of the city of Victoria to advise him what action the city propose to take towards reforming the agreements and by-laws so as to render them unobjectionable to the undersigned, and that as this matter has not as yet been dealt with by the council of Victoria, the Attorney General is not in a position to make any recommendation respecting these Acts.

The undersigned observes that chapter 85 contains a clause respecting aliens, the same as that contained in the other Acts of incorporation hereinbefore enumerated, and the reasons which have led the provincial government to recommend the repeal of that clause in other Acts of incorporation, apply equally in the present case. There is the further objection, both to this chapter and chapter 86, that the agreement and by-law ratifying the same which are referred to in both statutes, provide that no Chinese or Japanese person shall be employed upon the works of the company.

The undersigned would be satisfied to leave these Acts to their operation if section 25 of chapter 85 were repealed, and if an amendment were made affecting both these statutes, declaring that nothing in either Act contained should impose any statutory disability upon the company to employ Japanese. The action to be taken by the legislature does not, therefore, in the opinion of the undersigned depend upon the council of the city of Victoria, and he considers that this view should be communicated by telegraph to the Lieutenant Governor, with the request to inform Your Excellency's government within the time limited for disallowance, whether such amendments have been made.

Chapter 37: 'An Act to amend the Inspection of Metalliferous Mines Act and amending Act.'

The British Columbia Mining Association petitioned against this Act upon the grounds stated in their petition, a copy of which was submitted to Your Excellency, with the report of the predecessor of the undersigned of 28th December last. The statute provides for the appointment of inspectors of mines, requires reports and

[illegible]

Respectfully submitted,

C. FITZPATRICK,
Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 20th June, 1902.

DEPARTMENT OF JUSTICE, OTTAWA, 12th June, 1902.

To His Excellency the Governor General in Council:

The undersigned, referring to his report of 9th instant, has the honour to state that in accordance with the recommendations therein made, the Secretary of State has telegraphed to the Lieutenant Governor of British Columbia and received his reply, which has been referred to the undersigned. The Lieutenant Governor states as follows: 'My government will not amend chapters 85 and 86 unless requested by municipal council of Victoria. Bills have been introduced to carry out recommended amendments to chapters 10, 25, 52, 65, 69, 70, 71, 72, 77, 78, 79 81, 83, 84, and 87. My government will undertake that said bills will certainly be passed at present session so far as they can give an undertaking respecting action of legislature.'

The undersigned considers that Your Excellency may properly accept the assurance so given by the Lieutenant Governor that the Acts mentioned other than chapters 85 and 86, will be satisfactorily amended at the present session of the legislature, and he recommends, therefore, that none of these Acts be disallowed.

As to chapters 85 and 86, it is to be observed that the provincial government decline to promote any amendment unless requested by the municipal council of Victoria. The undersigned has already pointed out that the action which the government and legislature of British Columbia ought to take does not depend upon any request from the municipal council, and he would, in view of the correspondence, recommend the disallowance of these two Acts, were it not for the fact that it is represented to the undersigned that the Victoria Terminal Railway and Ferry Company has already constructed its works, or a large portion thereof, that it has acquired rights and expended a large amount of capital upon the faith of the agreement with the city, and the two statutes in question, and it would, therefore, lead to very great hardship and expense, as well as some confusion of interests, in which innocent persons might suffer if these Acts were disallowed. Further, the undersigned entertains no doubt that the clause constituting the objection to the legislation is clearly *ultra vires*, and cannot legally affect the rights or capacity of aliens or Japanese or others, against whom it may be nominally directed. For these exceptional reasons, the undersigned considers

[illegible]

[illegible] Governor of British Columbia [illegible]
ment.

[illegible]

C. F[illegible]ZPATR[illegible]

[illegible]

BRITISH COLUMBIA.

2 EDWARD VII., 1902.

3rd Session—9th Legislature.

Japanese Consul General to His Excellency the Governor General.

Imperial Consulate General of Japan, June 25th, 1902.

Sir, Your Excellency,—In the name of His Imperial Japanese Majesty's government, I have the honour to call Your Excellency's serious attention to the following Bills that were passed by the British Columbia Legislative Assembly during the session which is just over, and to which assent was given on the 23rd instant by His Honour the Lieutenant Governor of the province, viz.:—

The section 14 above referred to will prejudically affect the number of Japanese the Lieutenant Governor of the province, namely:—

1st. The Bill entitled 'An Act to further amend the Coal Mines Regulation Act.'

According to the report made to me by His Imperial Majesty's consul at Vancouver, the said Bill has taken the form of re-enacting rule 34 of section 82 of chapter 138 of the revised statutes of British Columbia, with the addition to the said rule of the word 'Japanese' inserted after the word 'Chinaman.'

This rule, therefore, reads as follows: 'Rule 34. No Chinaman, Japanese, or person unable to speak English, shall be appointed to or shall occupy any position of trust or responsibility in or about a mine, subject to this Act, whereby through his ignorance, carelessness or negligence he might endanger the life or limb of any person employed in or about a mine, viz., as bankman, onsetter, signalman, brakeman, pointsman, furnaceman, engineer, or be employed below ground or at the windlass of a sinking pit.'

This rule, as Your Excellency is already aware of, as it appeared in the revised statutes of British Columbia, that is, without the present addition of the word 'Japanese,' was disallowed practically by the decision rendered by the Privy Council of Great Britain, which decided on an appeal taken from the decision of the full court of the province of British Columbia, as follows:—

'That an enactment by a provincial legislature that no Chinaman shall be employed in mines is beyond its competence, inasmuch as by the British North America Act, 1867, section 91, subsection 25, legislation with respect to naturalization and aliens is reserved exclusively for the parliament of the Dominion of Canada.' Relying on this decision of the highest tribunal of the British Empire, the present Bill must surely be *ultra vires* of the powers of the legislative assembly of British Columbia, as the word 'Japanese' as added is only variation in the originally disallowed rule 34.

2nd. The Bill No. 14: An Act relating to the employment on works carried on under franchises granted by private Acts, with one section added, as follows:

'(1) The Lieutenant Governor in Council may appoint the chief of the provincial police and any provincial police constable or other persons as officers to carry out and enforce the provisions of this Act.'

The provisions of this Act are the same, with the exception of last section 10, as given above, which has been added, as that Act passed as Chapter 14, 1900, Statutes of British Columbia, and entituled:

'An Act relating to the employment on works carried on under franchises granted by Private Acts.' This Act of chapter 14, 1900, was disallowed on September 11th, 1901, by Your Excellency.

The section 14 above referred to will prejudicially effect the number of Japanese settlers in the province, as it prohibits employment of any Japanese who are unable to read the Act in a language of Europe, on any of the works specified under this section, and besides there is every reason to believe that this section is deliberately meant against the employment of Japanese people only, as it is not a test of the language of the province, the English language, for any other European language is admitted for the test.

3rd. Insertion of these clauses in all private Bills which tend to the exclusion of the employment of Japanese labour, and particularly these clauses which are being added to the various railway Bills, notably section 4 of the Pacific Northern and Omenica Railway Company Bill, which discriminates against Japanese in particular.

4th. A resolution moved by a member of British Columbia legislature on the 10th April and carried on 15th of the same month, as follows:—

'That all contracts, leases and concessions of whatsoever kind entered into, issued or made by the government or on behalf of the government, provision be made that no Chinese or Japanese shall be employed in connection therewith.'

Pursuant to this resolution the Japanese consul at Vancouver reports special licenses are now being issued to which are attached a condition that no Chinese or Japanese shall be employed thereon.

It seems that this new clause has not been passed by a general Act of the Legislative Assembly, but the condition has been attached by the authority of section 50 of chapter 113 of the revised statutes of British Columbia, 1897, in which the Chief Commissioners of Lands and Works may grant licenses, to be called special licenses, subject to such conditions, regulations and restrictions as may from time to time be established by the Lieutenant Governor in Council.

Whether this be an Act or simply a resolution empowered by an Act, either its practical effect or with regard to its being constitutional or not, but in any case there is no doubt that it is the legislation which affects the questions of aliens, similar to that which was at stake in the case of Bryden *vs.* the Union Colliery Co. of British Columbia, in which it was decided by the Privy Council of Great Britain in July, 1890, that such legislation was distinctly unconstitutional. While this clause is unconstitutional, the Japanese residents in the province will materially suffer from the steps taken, as they are entirely prohibited from being engaged on timber limits and in work connected with the timber licenses and a large number of them will consequently be thrown out of work and from their living, which they peacefully enjoyed for a number of years.

5th. Bill introduced into the British Columbia legislature by the Minister of Mines of the same provincial government, entitled 'An Act to regulate immigration into British Columbia.'

This Bill is practically the same as the one that was introduced at a former session of the legislature, but was disallowed by Your Excellency's government.

The object of this Act is similar to the former one, inasmuch as it is aimed obviously and solely at the exclusion of the Japanese from the province, since by subsection (*b*) the Chinese are exempt from the provisions of the Act.

My protest, as stated in the foregoing paragraph, will apply to this last and most serious one with even stronger force, as should this Bill come into force, the Japanese will be totally deprived of their treaty right of free entry into Canada through their international highway, both by land and water, and the province of British Columbia will virtually mean to shut herself against the people of Japan. These high handed measures, pursued on the part of the British Columbia legislature, are almost an infringement of the treaty stipulations between the two most friendly powers concerned. Besides, it is manifest that such legislation is far from being constitutional, as the province is not entitled to have jurisdiction over the questions which involve the welfare and interests of aliens and immigrants, such power wholly resting with the Dominion government. Your Excellency is doubtless aware that the Imperial Japanese government has been voluntarily restricting emigration of their subjects into Canada for the past two years, for the sole reason to avoid any friction that might occur by

allowing them to come into British Columbia, and to cause any ill-feeling among a certain class of people there.

That the fact that the voluntary course thus taken by the Japanese government has proved so very effective is fully proved by the Royal Commissioners appointed by Your Excellency's government.

The commissioners state in their report, published as follows. 'Your commissioners fully appreciate the action taken by the government of Japan on August 2, 1909, whereby the governors of the prefectures of Japan were instructed to prohibit entirely for the time being the emigration of Japanese labourers for the Dominion of Canada, &c., &c.

'The course adopted by the Japanese government, if we may without presumption be permitted to say so, is most opportune, eliminating all causes of friction and irritation between Canada and Japan, and so favouring a freer trade and intercourse between the countries than could otherwise obtain.'

'Nothing further is needed to settle this most difficult question upon a firm basis than some assurance that the action already taken by the government of Japan be revoked.'

'Your commissioners desire to express their earnest hope that in the continuance of this friendly policy, legislation on this subject by the Canadian government may be rendered unnecessary.

'While your commissioners thus highly appreciate the measures taken by the government of Japan, and strongly recommend to your government that there should be no legislation enacted against the immigration of Japanese subjects into Canada, I am at a loss to find out why the British Columbia government should again pass the legislation above referred, which was disallowed by Your Excellency only six months ago.

I shall not argue any further on the subject, as all these Bills above referred to are merely repetitions of the Bills either passed by the British Columbia legislature in previous sessions, or disallowed by Your Excellency within only the last six months, and still more as they were so thoroughly and ably argued by my predecessor in office, Hon. S. Shinnger, on previous occasions, that I have very little to add to his arguments.

Before, however, concluding this note of official protest, I have further honour of requesting Your Excellency in behalf of His Imperial Japanese Majesty's government, that you will take speedy steps that these obnoxious Bills, particularly that relating to the Japanese immigration, be disallowed, before it shall come into force, as the legislation even for a moment if left in force, will most injuriously interfere with the free movement of all classes of Japanese in general, the consequence of it may eventually lead to jeopardizing of trade relations between Japan and Canada, in which British Columbia is particularly interested.

While I trust that Your Excellency's government should similarly be ready to act on this occasion on the same enlightened and impartial policy which has been so recently extended to the legislation of this kind, they will also take into consideration that on account of the recent treaty, the people of the countries on both sides of the Pacific—the Empire of Japan and Dominion of Canada—should enter into closer union and have better understanding.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

I have, &c.,

TATSZGORO NOSSE.

The Japanese Consul General to His Excellency the Gover[illegible]

IMPERIAL CONSULATE GENERAL
MONTREAL, August 11th, 1902.

SIR, YOUR EXCELLENCY, I had the honour of addressing to Your Excellency in previous despatch, under date of June 26th, which copy is herewith accompanied, in relation to several Bills and resolutions as per enclosures marked A, B and C and D, which were passed in the British Columbia legislature during the last session, and assent was given later on by the Lieutenant Governor of the said province.

The Imperial Japanese Consul in British Columbia reports that since the laws above referred to had been enforced in that province, the Japanese people are practically debarred from the full enjoyment of their rights and privileges under the vigorous prosecution of such laws [illegible] hands of the [illegible]. What most affects their rights and interests are the laws practically prohibiting their free entry into the province and preventing their employment on works carried on under franchises granted by private Act, &c., and it is now proven so very obnoxious to our countrymen, that they can no longer stand the enforcement of these.

I beg leave, therefore, to call Your Excellency's attention to the fact that I am in receipt of a cable instruction from the Imperial Minister of State for Foreign Affairs in Tokio, that I should appeal to the good-will of your government and ask them to have these obnoxious laws disallowed, on the ground that the immigration [illegible] not only [illegible] but also contrary to Canadian constitution, and that the Imperial government of Japan are extremely surprised at such actions being taken in spite of [illegible] restrictions they had put since 1900 upon immigration of the [illegible].

I have, in accordance to the instructions above referred to, the honour of transmitting the earnest desire of my government to Your Excellency's government, and at the same time trusting that your government will lose no time in having these laws disallowed at an early date.

I avail myself of this opportunity to renew to Your Excellency [illegible].

I have, &c.,

TATSZGORO NOSS[illegible]

[illegible]

The Japanese Consul to the Chief Commissioner of Lands and [illegible]

[illegible]

[illegible] Council, and that the authority [illegible] Act revised statutes and amendments to the end of 1901. [illegible] of chapter 123 revised statutes of British Columbia, 1897, that the Chief Commissioner of Lands and Works may grant licenses to be called special licenses, [illegible]

established by the Lieutenant Governor in Council, and of which notice may be given in the British Columbia *Gazette*.

I have looked over the *Gazette* of May 1st, May 8th, and May 15th, but have been unable to find the notice referred to, would you kindly furnish me with the information as follows:—

1. If these conditions regarding the employment of Japanese labourers are now attached to the timber licenses which are issued?

2. If it is pursuant to the section 50 referred to the chapter 113 revised statutes of British Columbia, or if a special Act has since been passed by the legislature.

3. If a notice has been given by the Lieutenant Governor in Council, could you please give me the date and page of the *Gazette* in which the said notice is contained?

Hoping I am not giving you undue trouble, and trust you can favour me with an early reply.

I have, &c.,

S. P. SACKO,

Chancellor in charge of His Imperial Japanese Majesty's Consulate, Vancouver, B.C.

The Chief Commissioner of Lands and Works of the Province of British Columbia to Japanese Consul.

LANDS AND WORKS DEPARTMENT, VICTORIA, May 27th, 1902.

SIR,—I have the honour to acknowledge the receipt of your letter of the 22nd instant, and in reply to your inquiry, I beg to say that the condition respecting the non-employment of Chinese and Japanese, attached to the special licenses to cut timber, was made pursuant to a resolution of the legislative assembly of this province now in session.

I have, &c.,

W. C. WELLS,

Chief Commr. of L. & W.

Hon. S. P. SACKO,

Chancellor in charge of His Imperial Japanese Majesty's Consulate,

Victoria, B.C.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 5th December, 1902.

DEPARTMENT OF JUSTICE, OTTAWA, 14th Nov., 1902.

To His Excellency the Governor General in Council:

The undersigned has the honour to submit his report on the following statutes of the legislature of British Columbia, passed during the second year of His Majesty's reign (1902) [illegible], and received by the Secretary of State for Canada on the 29th day of September last:

Chapter 34, 'An Act to regulate Immigration into British Columbia.'

Chapter 38, 'An Act relating to the employment on works carried on under fran[illegible] Private Acts.'

[illegible] 48, 'An Act to further amend the "Coal Mines Regulation Act".'

Chapter 34 is a re-enactment of Chapter 11, 64 Victoria, of the Statutes of British Colu[illegible]

Chapter 38 is a re-enactment of Chapter 11, 61 Victoria, of the Statutes of British Columbia.

These statutes as originally enacted were disallowed by order of Your Excellency in Council of 11 [illegible] stated in the report of the Minister of Justice [illegible]

[illegible] enactment should be disallowed.

Chapter 48 amends the Coal Mines Regulation Act [illegible] Japanese, either as alien or as naturalized [illegible] decision of the Judicial Committee of the Privy Council, in the case of the [illegible] Colliery Company of British Columbia vs. Bryden, 1889, Appeal Cases, 580. [illegible] an example of discrimination [illegible] has for years disallowed by Your Excellency [illegible] provincial [illegible] for the disallowance [illegible]

The undersigned does not consider that any [illegible] be [illegible] correspondence with respect to the statutes, and he recommends that [illegible] be disallowed.

Respectfully submitted,

E. FITZPATRICK,
Minister of Justice.

Proclamation Disallowing Chapter 34.

AT THE GOVERNMENT HOUSE AT OTTAWA.

Friday, the 5th day of December, 1902.

PRESENT:

His Excellency the Governor General in Council.

Whereas the Lieutenant Governor of the province of British Columbia, with the Legislative Assembly of that province, did on the 21st day of June, 1902, pass an Act, which has been transmitted, chaptered 34, and intituled 'An Act to regulate Immigration into British Columbia.'

And whereas the said Act has been laid before the Governor General in Council, together with a report from the Minister of Justice, recommending that the said Act be disallowed.

Therefore the Governor in Council has this day been pleased to declare his disallowance of the said Act, and the same is hereby disallowed accordingly.

Whereof the Lieutenant Governor of the province of British Columbia and all other persons whom it may concern are to take notice and govern themselves accordingly.

JOHN J. McGEE,
Clerk of the Privy Council.

I, Sir Gilbert John Elliott, Earl of Minto, Governor General of Canada, do hereby certify that the Act passed by the Legislature of the province of British Columbia, on the 21st day of June, 1902, chaptered 34, intituled 'An Act to regulate Immigration into British Columbia,' was received by me on the 29th day of September, 1902.

Given under by hand and seal at Ottawa this fifth day of December, 1902

MINTO.

Proclamation Disallowing Chapter 38.

AT THE GOVERNMENT HOUSE AT OTTAWA.

Friday, the 5th day of December, 1902.

PRESENT:

His Excellency the Governor General in Council.

Whereas the Lieutenant Governor of the province of British Columbia, with the Legislative Assembly of that province, did on the 21st day of June, 1902, pass an Act which has been transmitted, chaptered 38, and intituled 'An Act relating to the employment on works carried on under Franchises granted by Private Acts.'

And whereas the said Act has been laid before the Governor General in Council, together with a report from the Minister of Justice, recommending that the said Act be disallowed.

The Governor General in Council has thereupon this day been pleased to declare his disallowance of the said Act, and the same is hereby disallowed accordingly.

Whereof the Lieutenant Governor of the province of British Columbia, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

JOHN J. McGEE,
Clerk of the Privy Council.

I, Sir Gilbert John Elliott, Earl of Minto, Governor General of Canada, do hereby certify that the Act passed by the Legislature of the province of British Columbia on the 21st day of June, 1902, chaptered 38, intituled 'An Act relating to the employment on works carried on under Franchises granted by Private Acts,' was received by me on the 29th day of September, 1902.

Given under by hand and seal at Ottawa this fifth day of December, 1902.

MINTO.

Proclamation Disallowing Chapter 48.

AT THE GOVERNMENT HOUSE AT OTTAWA.

Friday, the 5th day of December, 1902.

PRESENT:

His Excellency the Governor General in Council.

Whereas the Lieutenant Governor of the province of British Columbia, with the Legislative Assembly of that province, did on the 21st day of June, 1902, pass an Act which has been transmitted, chaptered 48, and intituled 'An Act to further amend the Coal Mines Regulation Act.'

And whereas the said Act has been laid before the Governor General in Council together with a report from the Minister of Justice, recommending that the said Act should be disallowed.

The Governor General in Council has thereupon this day been pleased to declare his disallowance of the said Act, and the same is hereby disallowed accordingly.

Whereof the Lieutenant Governor of the province of British Columbia and all other persons whom it may concern, are to take notice and govern themselves accordingly.

JOHN J. McGEE,
Clerk of the Privy Council.

I, Sir Gilbert John Elliott, Earl of Minto, Governor General of Canada, do hereby certify that the Act passed by the Legislature of the province of British Columbia, on the 21st day of June, 1902, chaptered 48, and intituled 'An Act to further amend the Coal Mines Regulation Act,' was received by me on the 29th day of September, 1902.

Given under my hand and seal at Ottawa this fifth day of December, 1902.

MINTO.

EXTRACT *from a report of the Honorable the Minister of Justice, dated 24th November, 1902, approved by His Excellency the Governor General in Council on 12th December, 1902.*

These acts were received by the Secretary of State for Canada on 29th September last:—

Chapter 26, 'An Act to amend the British Columbia Fisheries Act, 1901.'

In recommending that this Act be left to its operation, the undersigned does not extend to admit that all its provisions are *intra vires*. The British Columbia Fisheries Act of 1901 contained a number of objectionable provisions on account of which the Act would have been disallowed, but for the undertaking of the provincial government to obtain proper amendments. The amendments as passed appear in the Act now in question, and they no doubt remove many of the objections to the former Act. They do not, however, go to the extent which the undersigned would have urged if he had had an opportunity to consider the amendments within the time limited for disallowance of the Act of 1901. The undersigned considers, however, that the provisions of the present Act may have operation within the scope of the authority committed to provincial legislatures, and in so far as they may be any attempt to administer the Act, so as to give an *ultra vires* effect, courts would no doubt afford an easy remedy.

Chapter 27, 'An Act to amend the "Bush Fire Act".'

Section 3 states requirements for the prevention of fires as to all locomotive engines used on any railway which passes through any fire district. These requirements are not unreasonable, and perhaps not in excess of those prescribed in such cases by the common law, but the undersigned desires to point out that the legislation must be construed as limited to railways within the legislative authority of the province, and that it cannot affect Dominion railways.

Chapter 31, 'An Act to regulate immigration into British Columbia.'

Chapter 38, 'An Act relating to the employment on works carried on under franchises granted by private Acts.'

Chapter 48, 'An Act to further amend the "Coal Mines Regulation Act."'

The undersigned has by a previous report recommended the disallowance of each of these Statutes.

Chapter 30, 'An Act to regulate the employment of labour upon subsidized works.'

Chapter 40, 'An Act to amend the "Liquor Licence Act, 1900".'

Chapter 73, 'An Act to prohibit aliens from voting at municipal elections.'

The undersigned will submit a future report upon each of these Statutes.

Chapter 74, 'An Act respecting compensation to workmen for accidental injuries suffered in the course of their employment.'

This is a workman's compensation Act affecting the liability of the employer for injuries caused to workmen arising in the course of their employment. Section 9 provides that the Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to any employment by or under the Crown, to which this Act would apply if the employer were a private person. The use of the words 'naval or military' in this section suggests that it is intended to affect not only the Crown in the right of the province, but also the Dominion Crown. The undersigned apprehends that it is incompetent to a provincial legislature to so legislate as to impose liability upon the Crown in the right of Canada, and that in so far as the Act is

intended to have that effect, it is *ultra vires*. The courts may, however, very well determine this point if raised, and the undersigned does not on that account recommend the disallowance of the Act which relates in the main to matters within the legislative control of the province.

C. FITZPATRICK,
Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 25th May, 1903.

DEPARTMENT OF JUSTICE, OTTAWA, May 14th, 1903.

To His Excellency the Governor General in Council:

The undersigned has under further consideration the following statutes of the province of British Columbia passed in the second year of His Majesty's reign, nineteen hundred and two, namely:

Chapter 39, 'An Act to regulate the employment of labour upon subsidized works.'

Chapter 49, 'An Act to amend the Liquor License Act, 1900.'

Chapter 53, 'An Act to prohibit aliens from voting at municipal elections.'

The undersigned was not prepared to make any recommendation with regard to these Acts at the time of reporting upon the other Acts passed during the session of 1902, because it seemed desirable to await the result of litigation then pending which involved a question relating to the authority of the legislature to pass such Acts as these. The question having since been determined favourably to the province, and it not appearing to the undersigned that these Acts are *ultra vires* of the legislature or so far in conflict with Dominion policy as to justify their disallowance, the undersigned recommends that they be left to such operation as they may have.

Respectfully Submitted,

C. FITZPATRICK,
Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council, on the 15th June, 1903.

DEPARTMENT OF JUSTICE, OTTAWA, May 26th, 1903.

To His Excellency the Governor General in Council:

The undersigned has received a communication from Mr. G. G. S. Lindsey, K.C., of Toronto, transmitting a memorandum prepared by Mr. A. G. Galt, K.C., of Ross land, respecting chapter 66 of the British Columbia Statutes of 2 Edward VII. (1902) intituled: 'An Act to amend the law relating to Trades Unions.'

It is urged that the Act should be disallowed for the reasons stated in Mr. Galt's memorandum, copy of which is submitted herewith.

It is argued that the statute is *ultra vires* as affecting the regulation of trade and commerce, and aliens, and that it is in conflict with the Trades Unions Act of Canada.

The undersigned has carefully considered these grounds and what is alleged in support of the application for disallowance. The Act is not, however, in the opinion of the undersigned, so clearly *ultra vires* as to justify its disallowance. The reasons

[illegible] the Act may all be [illegible] Act [illegible] accordingly.

[illegible]

[illegible]

[illegible]

Mr. A. C. Galt, K.C. [illegible]

[illegible]

DEAR SIR, I desire to draw your attention to [illegible] which was enacted by the legislature of British Columbia last year, and which may probably be got rid of by disallowance [illegible]

The Act I allude to is 'An Act [illegible] Trade Unions,' and being chapter 66 of the statutes of 190[illegible].

It is so short and so full of harmful provisions that I will set it before you in 190[illegible] as follows:

'(Chap. 66.) An Act to amend the law relating to Trade Unions. (21st June, 1902.)

'His Majesty, by and with the advice and consent of the Legislative Assembly of the province of British Columbia, enacts as follows:

'1. No trade union nor any combination of workmen or employees in British Columbia, nor the trustees of any such union or combination in their representative capacity shall be liable in damages for any wrongful act of commission or omission in connection with any strike, lock-out or trade or labour dispute, unless the members of such union or combination or its council, committee or other governing body, acting within the authority or jurisdiction given such council, committee or other governing body by the rules, regulations or constitution of such union or combination or the resolutions or directions of its members assembled in meeting, or a majority thereof, shall have authorized, or shall have been a consenting party to the wrongful act.

'2. No such trade union or association shall be [illegible] officer, member, agent or servant of such union or association or other person be fined, nor shall it or its funds, nor any such officer, member, agent or servant or other person, be made liable in damages for [illegible] any workman, artisan, labourer, employee or person, facts respecting [illegible] any employer, producer or consumer or distributor of the products of [illegible] purchase of such products or for personal damage [illegible] reasonable argument, without unlawful threats, intimidation or other illegal acts, such last named workman, artisan, [illegible] any existing contract, not to work [illegible] employer or customer of any such employer, [illegible] of labour.

'3. No such trade union or association or [illegible] servant, other person, shall be enjoined or restrained [illegible] liable damages for publishing information [illegible] or proposed or expected strike or lock-out, or other labour grievance or trouble, or for warning workmen, artisans, labourers or employees [illegible] employees in the locality affected by such [illegible] trouble, or from purchasing, buying or consuming products produced or distributed by the employer of labour party to such strike, lock-out, labour grievance or trouble, during continuance.'

Under section 4 no trade union nor its trustees are to be liable unless under circumstances which would be almost incapable of proof.

As I read the section it is a *sine qua non* that the governing body must be shown to be 'acting within the authority or jurisdiction given such governing body by the rules, &c.'

It is well known that trade unions are very careful to so frame their rules as to leave out any provisions which might be used against them.

The intention of the framers of this Act was to do away with the effect of the celebrated Taff Vale case (1901 A.C. 426) and Quinn vs. Leathem, 1901, A.C. 495, which finally decided that trade unions are liable, like every one else, in respect to their wrongful acts.

British Columbia is a hot bed of unionism, and it is advisable to preserve all possible means of protection to our industries, by injunction or otherwise, as occasion might require.

I think the Dominion Government might well be urged to disallow the British Columbia statute, upon the following grounds:—

REASONS FOR DISALLOWANCE.

1. Prompt action is desirable and necessary.

The Provincial Legislature has no power to amend the Dominion law. See Dobie vs. The Temporalities Board 7 App. Cas. 136.

The provincial statute interferes with and contravenes an existing Act of the Dominion Parliament. The law relating to trade unions, as it existed at the date of the statute, is continued in the Dominion Trade Unions Act, 35 Vic., cap. 30. (R.S.C., cap. 131.)

This Dominion Act was intended to supersede the former common law, and is almost a transcript of the Trade Union Act of Great Britain, passed prior to the Dominion Act. This has been recognized in our highest Canadian court, as will be seen from the following extract from the case of Perreault vs. Gauthier, 28 S.C.R. at page 25.

'The English courts have had, therefore, several occasions to consider the statutes, which have been reproduced in our Canadian Statute Book; and finally the House of Lords has pronounced on them not only once, but twice, in 1897 in Allen vs. Flood (1898 A.C. 1, and in 1892 in the Mogul Steamship Company vs. McGregor (1892 A.C. 25), and we have no hesitation in saying that its jurisprudence is binding upon us in a case like the present one.'

There is one noticeable variation from the English statute, contained in section 5, of the Dominion Act, providing that 'this Act shall not apply to any trade union not registered under this Act.'

The Dominion Act, of course, applies to all the provinces, and covers the whole field of legislation on the subject. But this British Columbia statute professes to amend the law, and its provisions are wholly at variance with the Dominion Act.

For example, the British Columbia statute draws no distinction between trade unions which have registered and those which have not done so; and it thereby exempts from liability a number of clearly illegal bodies, and takes away from the employers of labour, the reasonable protection, by way of injunction and otherwise, which the law afforded them.

No doubt the invalidity of the provincial statute might be claimed in any legal proceeding before our courts, without any disallowance, but the serious objection to relying upon this mode of relief is that, when the occasion arises, by reason of a strike or other disturbance, the remedy must be prompt, or it is almost wholly useless.

So long as the statute remains on the statute book an applicant for an injunction or other summary relief, must succeed in convincing the court, or other judicial officer, that the statute is *ultra vires* of the legislature, and, of course, the question would be contested vigorously by the opposite party, and it would be necessary to give to the attorneys general of the Dominion and the province, an opportunity of attending the

proceedings. All this would mean such a loss of time that prompt action would be impossible, and thereby the protection to which all persons are entitled by law would be practically denied.

2. The provincial statute interferes with the jurisdiction of the Dominion regarding 'the regulation of trade and commerce.'

In this connection it is to be remembered that trade unions throughout the province of Canada do not restrict their membership or operations to any particular province or even to Canada.

It is well known that several strikes have occurred in Canada that were initiated by American trade unions, whose membership or affiliation extended into Canada. Here in British Columbia we have been the victims of several strikes, initiated and supported by an American trade union known as the Western Federation of Miners. This organization has formed branches throughout British Columbia, and the members are all bound by the rules and instructions of the head office in Denver, Colorado.

The strike which occurred in Rossland in 1901, whereby all our mines were closed for about six months, was initiated in Denver and engineered by officers of the American union.

Recent disastrous strikes in the coal mines on Vancouver Island, and at Fernie, have all been carried out by this same Western Federation of Miners.

In further illustration of the view that the law affecting trade unions falls under 'Trade and Commerce,' I would point out that all of our gold, silver, lead and copper ores and a large amount of our coal is exported from British Columbia to the United States and elsewhere. Now these industries in this and other provinces of the Dominion are intimately connected with the Miners' Unions, all of which, as I understand, are branches of, or affiliated with, the above-mentioned Western Federation of Miners at Denver, Colorado.

3. The rights and disabilities of 'aliens.'

This is another feature of this trade union question as it exists in British Columbia which ought to be considered.

A very large proportion of the members of our trade unions are aliens from the States. They are here only temporarily, and they bring their union with them in order that they may not be 'black-listed' when they return across the line. During the strike at Rossland the strange spectacle occurred of a determined effort on the part of these American aliens, to enforce our Canadian alien labour law against Canadian labourers coming in from other provinces of the Dominion.

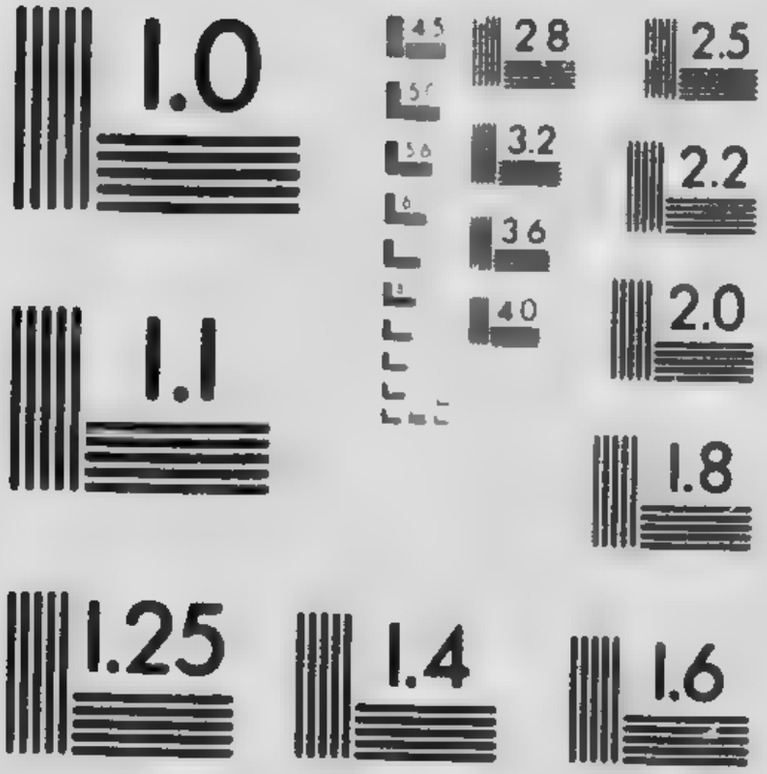
For these reasons it appears to me the disallowance of the provincial statute would settle a great grievance, felt by all who are exposed to the illegal actions of men who have really no stake in the country.

Yours faithfully,

A. C. GALT.

MICROCOPY RESOLUTION TEST CHART

ANSI and ISO TEST CHART No. 2



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BRITISH COLUMBIA.

3 EDWARD VII., 1903.

4th Session—9th Legislature.

Report of the Honourable the Minister of Justice, [illegible] to His Excellency the Governor General in Council [illegible] 1903.

DEPARTMENT OF JUSTICE, OTTAWA, 5th [illegible], 1903.

To His Excellency the Governor General in Council:

The undersigned has had under consideration an Act of the Legislature of the province of British Columbia, passed at the last session thereof, and assented to by the Lieutenant Governor on 4th May, 1903, intituled: 'An Act relating to the employment on works carried on under franchises granted by private Acts,' the same having been received by the Secretary of State for Canada on 15th May last.

The undersigned observes that this Act corresponds with chapter 38 of the British Columbia statutes, 1902, bearing the same title which was disallowed by order of Your Excellency in Council, approved on 5th December, 1902. A similar Act passed in the year 1901 was disallowed by order of Your Excellency in Council on 11th September, 1901.

Upon the grounds stated for the disallowance of the previous corresponding Acts, the undersigned recommends that the Act now in question be disallowed.

Respectfully submitted,

C. FITZPATRICK,
Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 23rd and 26th March, 1904.

DEPARTMENT OF JUSTICE, OTTAWA, 1st October, 1903.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the following Acts of the Legislature of the province of British Columbia, passed at the last session thereof, viz:

Chapter 12, intituled: 'An Act to regulate the [illegible] in British Columbia.'

Chapter 14, intituled: 'An Act [illegible] on works carried on under franchises granted by private Acts.'

Chapter 17, intituled: 'An Act [illegible] the Coal Mines Regulation Act.'

These Acts correspond with chapters 34, 38 and 18, bearing the same titles, which were disallowed on the report of the undersigned of 14th November, 1902, approved by Your Excellency on 5th December, 1902.

Upon the grounds stated in the said report for the disallowance of the previous corresponding Acts, the undersigned recommends that the three Acts above mentioned be disallowed.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

P[illegible]

AT [illegible]

[illegible]

L[illegible]

Whereas the Lieutenant Governor of the province of [illegible] Legislative Assembly of that province, did on the 4th day of May, 1903, pass an Act, which has been transmitted, chaptered 14, and intituled: 'An Act [illegible] payment on works carried on under franchises granted by private Acts.'

And whereas the said Act has been laid before the Governor General in Council, together with a report from the Minister of Justice, recommending that the same be disallowed.

The Governor General in Council has thereupon this day been pleased to declare his disallowance of the said Act, and the same is disallowed accordingly.

Whereof the Lieutenant Governor of the province of British Columbia and all other persons whom it may concern are to take notice and govern themselves accordingly.

JOHN J. McGEE,
Clerk of the Privy Council.

I, Sir Gilbert John Elliot, Earl of Minto, Governor General of Canada, do hereby certify that the Act passed by the legislature of the province of British Columbia, on the 4th day of May, 1903, chapter 14 and intituled: 'An Act relating to the payment on works carried on under franchises granted by private Acts,' was assented to by me on the 15th day of May, 1903.

Given under my hand and seal this 23rd day of March, 1904.

MINTO.

Proclamation Disallowing Chapters 12 and 17.

AT THE GOVERNMENT HOUSE AT OTTAWA.

Thursday, [illegible] March, 1904.

PRESENT:

His Excellency the Governor General in Council.

Whereas the Lieutenant Governor of the province of British Columbia, on the Legislative Assembly of that province, did on the 4th day of May, 1903, pass two certain Acts, which have been transmitted, chaptered respectively, 12, intituled: 'An Act to regulate immigration into British Columbia,' and 17, intituled: 'An Act further to amend the Coal Mines Regulation Act.'

And whereas the said Acts have been laid before the Governor General in Council, together with a report from the Minister of Justice recommending that the same should be disallowed.

Therefore the Governor General in Council has this day been pleased to declare his disallowance of the said Acts, and the same are hereby disallowed accordingly.

Whereof the Lieutenant Governor of the Province of British Columbia and all other persons whom it may concern are to take notice and govern themselves accordingly.

JOHN J. McGEE,
Clerk of the Privy Council.

I, Sir Gilbert John Elliot, Earl of Minto, Governor General of Canada, do hereby certify that the Acts passed by the legislature of the province of British Columbia on the 4th day of May, 1903, chaptered 12, and intituled: 'An Act to regulate immigration into British Columbia,' and 17, intituled: 'An Act further to amend the Coal Mines Regulation Act,' respectively, were received by me on the 15th day of May, 1903.

Given under my hand and seal this 26th day of March, 1904.

MINTO.

EXTRACT *from a Report of the Honourable the Minister of Justice, dated 8th January, 1904, approved by His Excellency the Governor General in Council, on the 23rd March, 1904.*

3 Edward VII.—Received by the Secretary of State on 25th June, 1903.

Chapter 8, intituled: 'An Act to ratify an Order in Council approved on the eighteenth day of March, 1902, rescinding certain provisions of an Order in Council approved on the fourth day of September, 1901, respecting the land grant of the Columbia and Western Railway Company.'

The undersigned reserves this Act for further consideration, inasmuch as he understands that objections are urged against it on behalf of the railway company whose title is thereby affected.

Chapter 12, intituled: 'An Act to regulate immigration into British Columbia.'

Chapter 14, intituled: 'An Act relating to the employment on works carried on under franchises granted by private Acts.'

Chapter 17, intituled: 'An Act to further amend the "Coal Mines Regulation Act."'

The undersigned has already reported recommending the disallowance of these three Acts for the reasons upon which similar Acts have heretofore been disallowed.

Chapter 30, 'An Act to incorporate the 'Ac River Railway Company.'"

Chapter 32, 'An Act to incorporate the Bri Columbia Northern and Mackenzie Valley Railway Company.'

Chapter 33, 'An Act to incorporate the "Flathead Valley Railroad Company."'

Chapter 34, 'An Act to incorporate the Kootenay, Cariboo and Pacific Railway Company.'

Chapter 35, 'An Act to incorporate the Kootenay Central Railway Company.'

Chapter 36, 'An Act to incorporate the Kootenay Development and Tramways Company.'

Chapter 37, 'An Act to incorporate the Morrissey, Fernie and Michel Railway Company.'

Chapter 38, 'An Act to amend the "Nicola, Kamloops and Similkameen Coal and Railway Company Act, 1891."'

Chapter 39, 'An Act to incorporate the Pacific Northern and Eastern Railway Company.'

Chapter 42, 'An Act to amend the "Vernon and Nelson Telephone Company Act, 1891."'

Each of these Acts contains a provision in effect that the Act shall not come into force until the company shall give security to the satisfaction of the Lieutenant Governor in Council, that in the event of Dominion legislation bringing the company under the exclusive jurisdiction of the parliament of Canada, the authority of the Lieutenant Governor in Council to fix maximum rates for freight and passenger traffic shall be secured, as matter of contract and obligation of the company. This provision corresponds with that contained in previous Acts of British Columbia, the objections to which were stated by the Minister of Justice at the time. These chapters are subject to the same comment, but may for the same reasons be left to their operation.

C. FITZPATRICK,
Minister of Justice.

Report of the Honourable the Minister of Justice on Chapters 12, 14 and 17 of British Columbia Statutes, 1903 (no Order in Council was passed upon this report).

DEPARTMENT OF JUSTICE, OTTAWA, 11th March, 1904.

To His Excellency the Governor General in Council:

There has been referred to the undersigned copy of a communication addressed to Your Excellency by the Consul General for Japan, dated 26th ultimo, urging upon Your Excellency's government the disallowance of certain statutes of the legislature of British Columbia, passed during the year 1903, affecting Japanese.

The undersigned has already reported to Your Excellency recommending the disallowance of these statutes, and he has, therefore, no further recommendation to make upon the communication now referred.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

The Japanese Consul General to His Excellency the Governor General of Canada.

IMPERIAL CONSULATE GENERAL OF JAPAN, FOR THE DOMINION OF CANADA,
26th February, 1904.

Right Honourable the Earl of Minto, Governor General of Canada:

SIR, YOUR EXCELLENCY,—I have the honour of calling Your Excellency's attention to my previous despatch under date of the 20th May, 1903, in which I presented my protest under the instruction of His Imperial Japanese Majesty's Minister of State for Foreign Affairs, against the following Acts enacted by the British Columbia legislature during their session of 1903, namely: (1) An Act to regulate immigration into British Columbia, (2) An Act relating to the employment on works carried on under franchises granted by Private Acts, (3) An Act relating to the Coal Mine Regulations.

In my former despatch I had the honour of asking Your Excellency's government that they would take the earliest measures to have these Acts disalloyed, as

[illegible] British Columbia, but I [illegible]

[illegible] Act of 1903, the [illegible] which is styled: 'An Act to Regulate [illegible] Britons in Columbia.' This Act is [illegible] Act of 1903 in every way, only [illegible] in the new Act is [illegible] and severe in [illegible]

The fact that this new Act being enacted solely against the Japanese people, as [illegible] proven by several speeches made during the debate by the members of the British Columbia legislature during last [illegible] Hansard, which is herewith annexed, as number [illegible]

I see no reason why the British Columbia Legislature is so very persistent in [illegible] high-handed and unfriendly measures against the Japanese people, and why this Act should be tolerated to any length of time, without being disallowed. Your Excellency's government, doubtless, should be aware of the Japanese government enforcing her voluntary restrictions on her people emigrating to British Columbia, as your Prime Minister has been supplied from time to time with the list of Japanese arrivals in that province. The copies of these tables are herewith annexed as numbers two and three. According to these tables, Your Excellency will note that the passports issued by the Japanese government were in 1901, 165; 1902, 165; 1903 (four months), 97; and the total numbers of Japanese people landed during last seven months, ending in December, 1903, in British Columbia, were 1,425, but those who remained in that province were only 217, including old residents and their wives and children, a great majority being on their way to the United States. The numbers shown on the tables can further be proven by the statements made by the British Columbia provincial immigration officers before the special committee appointed to investigate the violation of the Immigration Act, held last month at Victoria. The officer stated that 'during 1903 about 95 per cent of the Japanese having passports had them for the United States.' Another officer made a statement that two-thirds or 90 per cent of the Japanese who entered, left the province.' These self-evidences on the part of the British Columbia government will show that only five to ten per cent of whole number of the Japanese people landed there, remained in the province, which can neither be said to be a large influx, nor to be a large addition to already fast decreasing Japanese population in British Columbia.

I do not doubt for a moment that Your Excellency's government will take the earliest measures to have both Acts of 1903 and 1904 disallowed at the same time, as you are well aware that these Acts are solely aimed at a discrimination against the Japanese people, and the enforcement, therefore, of these laws, especially that of 1904, will seriously affect the interest and dignity of our people.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

I have, &c.,

TATSZGORO NOSSE,
Consul General for Japan.

No. 1.

[illegible]

Mr. J. A. M[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Mr. P[illegible] [illegible] wire, should [illegible] [illegible].

The Attorney General [illegible] could not read or write.

An amendment introduced by Mr. Ev[illegible] [illegible] Canada from the operation of the Act, was carried.

On the sections making it a penalty for the [illegible] hired immigrants, Mr. McInnes pointed out that the [illegible] way for disallowance. It should be made broad [illegible] from every direction, and then it could not be said to [illegible] Japanese. The Japanese were the only objectionable class coming in by steamer to which this would apply. Advantage might be taken for this to disallow the Act.

The Attorney General said that the government would put [illegible] through in this form and this alone.

Mr. McInnes said upon the heads of the government would [illegible] the responsibility. He wanted to go on record on this matter.

Mr. J. Oliver, before the Act was passed, proposed that provision be made to allow of particular friends of the government making arrangements for their friends [illegible] letting a fee of $2 for immigrants entering.

The Bill was reported.

No. 2.

Actual number of passports issued by the Japanese government to their people, who left for Canada in the years 1901, 1902 and 1903:—

	1901		1902		1903, 4 months	
	Males	Females	Males	Females	Males	Females
Students	1[illegible]	0	[illegible]	0	[illegible]	0
Merchants	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Farmers	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Professionals	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Others	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Totals	[illegible]		[illegible]		[illegible]	

The families include wives and children of the old resident in British Columbia.

The professionals include all kinds of men of professions, such as physicians, teachers, clergymen, agriculturists, chemists, &c., and their assistants and those who make studies of the same.

No. 3.

Numbers of arrivals of Japanese passengers in British Columbia during the seven months from June to December, 1903: Merchants, 7; travellers, 1,208; students, 12; old residents and families, 188; passed test, 10; total, 1,425.

The Japanese Consul General to His Excellency the Governor General of Canada.

IMPERIAL CONSULATE GENERAL, MONTREAL, May 20th, 1903.

His Excellency the Right Honourable Earl of Minto, Governor General of Canada, &c., &c., &c.

SIR, YOUR EXCELLENCY,—Under instruction of His Imperial Japanese Majesty's government, I have the honour of calling Your Excellency's attention to the following Bills, that were passed by the British Columbia Legislative Assembly at present in session, and that have become the law, being assented by the Lieutenant Governor of the province, namely:—

1. The Act intituled: 'An Act to regulate Immigration into British Columbia.'

2. The Act intituled: 'An Act relating to the employment on works carried on under franchises granted by private Acts.'

The two Acts are practically the re-enactment of that which were disallowed by Your Excellency's Order in Council twice in succession in 1901 and 1902.

Holding the same view as argued in my despatches of last year under similar circumstances, I have again the honour of drawing your attention to the fact that the Acts referred to are utterly unconstitutional, and are unquestionably meant to prohibit the Japanese subjects from residing in and entering British Columbia.

Your Excellency is doubtless aware that such legislation as these, with respect to the aliens, is incompetent to a provincial legislature, as only the Dominion Parliament of Canada is empowered to treat upon the su[illegible] that the object of enactment of these Acts is aimed obviously and solely [illegible] ion of the Japanese people from the province in question, since in the ca[illegible] gration Law' the Chinese are exempt by the payment of $800, as provided [illegible] subsection F; and again in the case of 'The Employment on Works carr[illegible] under Franchises,' there is another example of strong and deliberate manifestation of discrimination against the Japanese residents, as the so-called language test does not include the language of Japan, but only those of the European countries, while none of these languages except the English, being spoken in the province in general.

Knowing your government are fully posted on the question and trusting that they will take measures nothing but fair and just, I need hardly any further argument, but to request that Your Excellency's government will have these obnoxious Acts disallowed at an early date, as the enforcement even for a short period would seriously affect the interest and welfare of the Japanese subjects and the full enjoyment of their rights and privileges entitled by the treaty stipulations would be wrongfully denied by the local authorities.

I have, &c.,

T. NOSSE,

His Imperial Majesty's Consul General for the Dominion of Canada.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 9th April 1904.

DEPARTMENT OF JUSTICE, OTTAWA, 26th March, 1904.

To His Excellency the Governor General in Council:

The undersigned, with further reference to the Act passed by the legislature of the province of British Columbia, in the year 1903, chapter 8, intituled: 'An Act to ratify an Order in Council, approved on the 18th day of March, 1902, respecting certain provisions of an Order in Council approved on the 4th day of September, 1901, respecting the land grant of the Columbia and Western Railway Company,' which was by his previous report reserved for further consideration, begs the honourable recommend that the said Act be left to its operation.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

PRINCE EDWARD ISLAND.

1 EDWARD VII., 1901.

[illegible]

F[illegible] *His Excellency the Governor General in Council on the 25th January, 1902.*

The statutes were received [illegible] Chapter 10, "An Act to impose taxes on certain life insurance agents," upon which a separate report will be made.

DAVID MILLS,
Minister of Justice.

Report of the Honourable the Minister of Justice upon Chapter 10, approved by His Excellency the Governor General in Council on the 15th January, 1902.

DEPARTMENT OF JUSTICE, OTTAWA, 28th December, 1901.

To His Excellency the Governor General in Council:

The undersigned has had under consideration chapter 10, of the statutes of Prince Edward Island, 1 Edward VII., 1901, intituled: "An Act to impose taxes on certain life insurance agents."

The Act imposes upon travelling agents soliciting applications for insurance on behalf of life insurance companies, an annual tax or license fee of $100, to be paid to the provincial secretary previous to such agent or person engaging in such business. It is expressly provided, however, that this requirement shall not apply to persons residing and having an office or fixed place of business within the province. A penalty is imposed for any person liable to the tax engaging in the business of soliciting applications for insurance, without having first paid the tax, and in any proceeding for the recovery of the penalty, proof of the fact of the person charged having solicited insurance as aforesaid is to be prima facie evidence of his guilt. This Act is intended, therefore, to discriminate directly in the business of life insurance against persons residing without the province. It may be questionable whether such legislation more appropriately falls within the classes of taxation which are assigned to the local legislatures, or to the regulation of trade and commerce which belongs to the Dominion, and which is certainly affected by provisions of this character. If as between these two, the Act is to be referred solely to the latter subject, it is ultra vires of the legislature, but assuming that it derives any force as an execution of the power of taxation vested in the legislature, it doubtless so far affects the regulation of trade as to entitle your Excellency's government to determine whether it is in the best interest of Canada that the Act should be allowed to stand.

The undersigned does not consider that the public interest is served by allowing unequal taxation within a province as between the residents of that province, and the

residents of other provinces of the Dominion which may happen to be doing business there.

In a report of the undersigned dated 8th November, 1898, upon a statute of Prince Edward Island, he stated as follows:—"The power of disallowance has, however, been vested in Your Excellency, not only for maintaining the constitutional lines of legislative authority, but also for preventing the provincial legislatures from interfering with Dominion policy, in matters in which it is competent under the constitution of the Dominion government to have a policy. There may be provincial legislation which can have effect until superseded by parliament, and as to such the [illegible] comprehends the power of disallowance may be properly exercised, if the legislation be in the opinion of Your Excellency's government prejudicial to Dominion interests. The statute now under consideration is, in the opinion of the undersigned, ultra vires, or it falls within the class to which reference has just been made. The remarks apply equally to the statute now in question. The undersigned observes, however, that the statute is general in its application, except as to residents of the province, and it may be aimed at some particular class in whose interest Your Excellency's government would not think proper to interfere. The statute may be susceptible to amendment, which, while working out the object of the legislation, may not seriously interfere with the residents of other provinces. The undersigned does not, therefore, at present recommend disallowance, but he desires that the provincial government should be asked to explain the object of this legislation and the reason for imposing a tax upon non-residents, to which residents of the province are not made subject in respect of the same business. The local government should also be asked to state whether consistently with their policy, the Act may be amended so as to exempt from its operation the residents of other provinces of Canada. Upon receiving the provincial report the undersigned will give the matter further consideration.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

Report of the Honourable the Minister of Justice upon Chapter [illegible] and His Excellency the Governor General in Council on the 1st [illegible]

DEPARTMENT OF JUSTICE, OTTAWA, [illegible]

To His Excellency the Governor General in Council:

The undersigned, referring to the report of his predecessor in [illegible] Your Excellency on 17th January last, with respect to chapter [illegible] Prince Edward Island, 1 Edward VII., 1901, intituled: "An Act [illegible] certain life insurance agents," has had under consideration [illegible] Lieutenant Governor of Prince Edward Island of 3rd and 19th [illegible] the reports therein referred to of the Attorney General of the province, [illegible] tention to the provincial Act, 63 Victoria, chapter 6, section [illegible] ance companies and associations having agencies or accepting [illegible] of persons within the province, and transacting the business of [illegible] surance therein, whose principal office or organization [illegible] required to pay annually a tax of $225 each. This provision is [illegible] General as a reason for the latter Act now in question. It is [illegible] with a resident agent in the province has paid the tax willingly, for that [illegible] resident agents of companies having no established agency in the province [illegible] in and obtained insurance and business without contributing to the provincial [illegible] and that the statute was passed not to discriminate between the provinces, but [illegible]

[illegible] insurance agents to contribute as other insurance companies do towards the taxes of the province.

The under-signed observes that the requirement of the Act of 63 Victoria is not [illegible] companies having agencies established within the province, and that [illegible] the provincial [illegible] the taxes and other insurance companies are paying into the [illegible] as the legislature has authority to [illegible] and, therefore, the Act of 1 Edward VII., which imposes upon [illegible] cents an annual tax [illegible] fee of $100, may in some cases apply to the [illegible] which are already taxed under the Act of 63 Victoria. [illegible] however, [illegible] for disallowing the former Act, and since [illegible] by the Minister of Justice, it is probably [illegible] the latter Act will [illegible] [illegible] companies having [illegible] the under-signed [illegible] the under-signed does not feel [illegible] concerned [illegible] Nevertheless both these Acts discriminate against companies or individuals [illegible] outside of the province, and this is a policy which [illegible] Minister of Justice does not [illegible] Prince Edward Island [illegible] If it were one of the provinces [illegible] Acts [illegible] under-signed would consider further the propriety of making such a recommendation. But [illegible] only the latter Act, which is now in question, and as both Acts are [illegible] adoption of [illegible] nature, the former having been allowed to remain in operation, [illegible] other provinces [illegible] the rules [illegible] the said Act of 1 Edward VII., may be left to such operation as it may have. He recommends that a copy of this report, if approved, be transmitted to the Lieutenant Governor of Prince Edward Island for the information of his government.

Respectfully submitted,

C. FITZPATRICK,

Minister of Justice.

PRINCE EDWARD ISLAND

2 EDWARD VII., 1902.

2ND SESSION, 43RD GENERAL ASSEMBLY.

I [illegible] Assembly of the Province of Prince Edward Island [illegible] November 1902, appeared [illegible] Hon. L. [illegible] the 1[illegible] December, 1902.

These statutes were received by [illegible] Secretary of State [illegible] 28th July last, and they may be left to their operation without [illegible]

C. FITZPATRICK,
Minister of Justice.

PRINCE EDWARD ISLAND.

3 EDWARD VII., 1903.

3RD SESSION—34TH GENERAL ASSEMBLY.

EXTRACT *from a report of the Honourable the Minister of Justice, dated 8th January, 1904, approved by His Excellency the Governor General in Council on the 23rd March, 1904.*

3. Edward VII.—Received by the Secretary of State for Canada 16th December, 1903.

Chapter 17, intituled:

'An Act to consolidate and amend the several Acts incorporating the city of Charlottetown,' and

Chapter 18, intituled:

'An Act to consolidate and further amend the Acts incorporating the town of Summerside.'

The councils of the city of Charlottetown and the town of Summerside are by these Acts empowered to make by-laws with respect to various matters enumerated. Some of these powers may be construed as in excess of provincial authority, because they relate to the criminal law or other subjects within the exclusive jurisdiction of the Dominion. The undersigned considers, however, that such questions, as they arise, may be determined by the courts, and that these Acts may be left to their operation.

Chapter 28 intituled:

'An Act to alter the provisions of the wills of William and George Douglas.'

The undersigned is not at present prepared to make any recommendation upon this Act, inasmuch as there is some correspondence before him which he understands raises an objection to it by a person interested in the estate of William or George Douglas, and the undersigned proposes to make further inquiry.

The undersigned accordingly recommends that the Acts above mentioned or referred to be left to such operations as they may have, except chapter 28.

C. FITZPATRICK,
Minister of Justice.

Report of the Honourable the Minister of Justice upon Chapter 28, approved by His Excellency the Governor General in Council on the 19th April, 1904.

DEPARTMENT OF JUSTICE, OTTAWA, 13th April, 1904

To His Excellency the Governor General in Council:

With regard to an Act of the province of Prince Edward Island passed in the year 1903, being chapter 28, intituled: 'An Act to alter the provisions of the wills of William and George Douglas,' the undersigned has the honour to report that upon further inquiry it appears that the objections raised to this statute are not such as would justify Your Excellency in exercising the power of disallowance.

He recommends, therefore, that the Act be left to its operation.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

NORTH-WEST TERRITORIES.

1 EDWARD VII., 1901.

3rd SESSION—4th LEGISLATIVE ASSEMBLY.

EXTRACT *from a report of the Honourable the Minister of Justice, dated 31st December, 1901, approved by His Excellency the Governor General in Council on the 25th January, 1902.*

These ordinances were received by the Secretary of State for Canada on 13th July last.

Chapter 4, 'An ordinance respecting Public Works.'

Section 28 provides that the Commissioner of Public Works for the Territories may close up the whole or any portion of any public road allowance or any public road and may deal with the land in such road allowance or other public road as may seem expedient, and (2) that all documents necessary to transfer the title to the province, of any road allowance or any public trail which has been closed as therein provided, shall be signed by the commissioner.

This section would appear to be *ultra vires* of the Territorial Legislature in view of the provisions of subsection 1 of section 20 of chapter 17 of the Dominion statutes of 1894, as that subsection is enacted by section 20 of chapter 28 of the statutes of 1897. The subsection as so enacted provides that, subject to any ordinance made with respect thereto, the Lieutenant Governor in Council may close up any road allowance or trail which has been transferred to the Territories, or vary its direction, and may open and establish any new highway instead thereof, and may deal with the land in any road allowance, public travelled road or trail so closed as he sees fit.

It seems clear that while the legislature might, by ordinance, have provided a procedure for the closing of roads by the Lieutenant Governor in Council, or have defined the circumstances in which roads might be so closed, and might have prescribed the methods and procedure for the dealing by the Lieutenant Governor in Council with lands comprised in closed roads or road allowances, it was beyond its power to vest in any other body or official, the power to close them up, or to deal with the lands in them when closed.

The undersigned considers, therefore, that section 28 should be repealed or amended so as to make its provisions consistent with those of the Dominion statute and he recommends that the government of the Territories be requested to have such amendment made at the next session of the legislature.

Chapter 7, 'An ordinance respecting steam boilers,' provides for the appointment of inspectors of steam boilers for the Territories, and requires all such boilers to be annually inspected by the inspectors. No express exception from the requirements of the ordinance is made as to Dominion government boilers or boilers used upon work under the exclusive jurisdiction of parliament. The undersigned apprehends that the ordinance must be construed as not applying to these, and that in so far as it could be held to have any application to such Dominion boilers, the ordinance must be *ultra vires*. The undersigned does not recommend disallowance, but he directs attention to the matter, with a recommendation that the Territorial government have the Act amended so as to expressly except from its operation all boilers used in connection with works under the exclusive authority of parliament.

Chapter 22, 'An ordinance respecting foreign companies,' will be the subject of a separate report. The other ordinances may be left to their operation without comment.

DAVID MILLS,
Minister of Justice.

Report of the Honourable the Minister of Justice upon Chapter 22, approved by His Excellency the Governor General in Council, on the 10th January, 1902.

DEPARTMENT OF JUSTICE, OTTAWA, 21st December, 1901.

To His Excellency the Governor General in Council:

The undersigned has had under consideration chapter 22 of the ordinances of the Northwest Territories, passed in the first year of His Majesty's reign (1901) and received by the Secretary of State for Canada on 13th July, 1901, intituled: "An Ordinance respecting Foreign Companies.'

The expression 'foreign company' is defined to mean any company or association incorporated for the purpose of carrying on any business to which the legislative authority of the Legislative Assembly of the Territories extends, otherwise than by or under the authority of an ordinance of the Territories.

It is provided that no foreign company having gain for its object or a part of its object, shall carry on any part of its business in the Territories, unless and until it shall have been duly registered and licensed under this ordinance, and unless such license is in force, and there is a penalty provided against any unlicensed foreign company carrying on business, and against any company or person doing business on behalf of such unlicensed foreign company. It is enacted that a foreign company may become registered and obtain a license authorizing it to carry on its business or part thereof within the Territories on compliance with the provisions of the ordinance, and on payment of such fees as may be prescribed by the Lieutenant Governor in Council, and that subject to the provisions of its charter and regulations and to the terms of the license, such company shall upon being licensed, have the same powers and privileges in the Territories as if incorporated under the provisions of the Companies' Ordinance.

It may be observed here that, inasmuch as a foreign company is prohibited from doing any business without license, and since the effect of the license is thus stated operation, subject to the remarks of the Minister of Justice set forth in his report licensed, may only carry out within the Territories the objects of its charter in so incorporated under the provisions of the Companies' Ordinance, the implication and probable intention of the legislature would seem to be that such a company when licensed may only carry out within the Territories the objects of its charter, in so far as the same are authorized by the terms of the license and the provisions of the Companies' Ordinance, so that there may be limitations imposed even as against a licensed company, to exercise the powers conferred by its constitution.

Before the issue of a license to any foreign company, the company is required to file in the office of the registrar a verified copy of its charter and regulations, an affidavit that the company is still in existence and legally authorized to transact business under its charter, a copy of the last balance sheet of the company and the auditor's report thereon (or in the case of a company licensed under the Insurance Act of Canada, a duplicate of its last annual return), also a duly executed power of attorney approved by the registrar, empowering some person therein named residing within the Territories to act as attorney for the company for the purpose of accepting service of process, &c.

Section 6 provides that if the registrar is satisfied that the company is one that should be registered, he shall thereupon register the same and issue a license con-

taining certain particulars, the form of which license is by section 16 to be prescribed by the Lieutenant Governor in Council.

Section 8 requires every company licensed under the ordinance to make a statement annually to the registrar, verified by affidavit, containing a number of particulars as to the constitution and business of the company, except with regard to companies licensed under the Insurance Act of Canada, as to which a verified copy of an annual return is to be accepted in lieu of the foregoing statement. The registrar is, however, authorized to require any foreign company to supply such further and other information as shall seem to him reasonable and proper. The Lieutenant Governor is empowered by Order in Council to suspend or revoke the license of any company which refuses or fails to keep a duly appointed attorney within the Territories, or to comply with any of the provisions of the ordinance.

There is no doubt under the definition above quoted that the ordinance is intended to apply to companies incorporated by or under the authority of Canada, as well as to companies incorporated by any other authority outside the Territories and it is the undersigned apprehends clear having regard to the provisions of the ordinance, especially those to which he has particularly referred, that the object in view is not merely taxation, but also the regulation by means of licensing jurisdiction of the business of companies to which the ordinance is intended to apply.

The attention of the undersigned was first called to this ordinance by letter of 19th September last, from Messrs. Lougheed and Bennett, barristers, of Calgary, a copy of whose communication and of the correspondence thereupon with the Attorney General of the North-West Territories is submitted herewith. The Deputy Minister of Justice having, by direction of the undersigned, written to the Attorney General of the Northwest Territories, requesting him to submit any reasons which he thought proper for consideration of the undersigned in reporting upon the ordinance, the Attorney General cited the Companies' Act, 1897, of British Columbia, Part VI., Revised Statutes of British Columbia, 1897, Chapter 44, and the Ontario Act, respecting the licensing of extra provincial corporations, 63 Victoria, Chapter 24, as precedents for the ordinance. He states that the ordinance in question follows these statutes, and inasmuch as neither of them was disallowed, he assumed that the policy of Your Excellency's government was not to interfere with such legislation.

The undersigned does not consider it necessary to compare in detail the present ordinance with the statutes to which the Attorney General refers. It differs in material respects from both of them. The British Columbia Act was subject in its operation subject to the remarks of the Minister of Justice set forth in a report approved by the Governor General in Council on 8th November, 1897, and it is evident that that Act was not understood, so far as the point now in question is concerned, otherwise than as a measure of taxation. The Minister stated expressly that he construed the Act to intend that upon compliance with the statutory conditions, a company should be entitled to license, and that no power was attempted to be conferred by the Act which would authorize the licensing authority in refusing a license to such a company, where the company had complied with the requirements of the Act which seemed not unreasonable as to the filing of information and payment of fees. The Ontario Act which more nearly resembles this ordinance nevertheless escaped disallowance, and it was only saved by amendments made or agreed to be made, removing the objections raised by the undersigned which apply similarly to this ordinance.

It has been frequently stated by the undersigned or his predecessors in office, that the Parliament of Canada in the execution of its general authority to legislate for the peace, order and good government of Canada as well as in the regulation of trade and commerce, may incorporate companies with authority to do business throughout the Dominion, both with regard to matters specially enumerated in section 91 of the British North America Act, and at to matters, which so far as the territorial authority of the legislatures extend, are competent to these legislatures; and that

the undersigned does not deny to the legislatures power of taxation, he holds that neither in the execution of that or any other power have they the rigat to forbid the exercise by a company of its authority competently conferred in the execution of the exclusive powers of parliament or to impose restrictions upon such Dominion corporations, from which the like companies incorporated for similar purposes within the province, are exempt. The ordinance in question, however, contemplates that result, not only to the extent already pointed out, but because it appears to vest a discretion in the registrar as to whether or not any company applying shall be licensed. If it be determined that a company may be licensed, the powers conferred by its charter may be limited by the license, and the Lieutenant Governor in Council is authorized at any time to revoke the license. Such provisions relate to regulation rather than taxation, and are in the opinion of the undersigned *ultra vires*. With reference to the Ontario Act, the undersigned stated that he did not consider that a provincial legislature ought to require the payment of a license fee as a condition to a Dominion corporation doing business within the province, or to exact license fees discriminating between the trading corporations established by parliament and those established by the legislature. He stated that it was impossible to admit consistently with the general interests of Canada the principle of interference with Dominion policy, by discriminating taxation on the part of a province in a matter within Dominion jurisdiction, and that in such case disallowance was the proper remedy. The Ontario Act having been already amended by providing in effect that the licenses to be issued thereunder should not be subject to any limitations or conditions which would restrict the right of any corporation constituted by the Dominion or the late province of Canada, to carry on and exercise in Ontario all the business and powers which by its Act or charter of incorporation it might be authorized to carry on and exercise in Ontario, the undersigned considered that there should be further legislation either exempting Dominion corporations from the statute, or establishing equality with regard to license fees and taxation as between Dominion and provincial companies, and the Ontario government by formal minute, communicated to Your Excellency's government, gave the assurance that legislation would be introduced and carried through at the next session of the legislature making amendments in accordance with the view of the undersigned. In these circumstances the Act as amended was permitted to remain in operation.

The undersigned considers that the ordinance now in question can only be allowed to remain upon the same conditions. It should be amended so as either to exempt Dominion corporations altogether, or so as to provide that every such company shall be entitled to a license in terms as broad as the charter of the company, upon payment of the license fees lawfully required, and that no license fee shall be imposed or exigible under the ordinance as against a Dominion corporation, either as a condition of its doing business within the Territories or otherwise, except in so far as under the like circumstances a similar license fee is similarly chargeable by the law of the Territories, as against companies incorporated by or under the authority of a Territorial ordinance.

The undersigned recommends, therefore, that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Territories, and that he be requested to inform Your Excellency's government as soon as convenient, whether his government will undertake to have the ordinance amended in the manner indicated above within the time limited for disallowance. The Lieutenant Governor may also be asked in case the Territorial government agree to make such amendments to submit a copy of such proposed amendments for the consideration of Your Excellency's government.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

Messrs. Lougheed & Bennett to the Honourable the Minister of Justice.

CALGARY, N.W.T., September 10th, 1901.

SIR, On behalf of a large number of companies incorporated by letters patent under the provisions of 'The Companies' Act,' revised statutes of Canada, 1886, chapter 119 and amendments thereto, we beg to direct your attention to 'The Foreign Companies' Ordinance' passed by the legislative assembly of the Territories at its last session, being chapter 22 of the Ordinances of 1901. The Territorial government is now seeking by virtue of this legislation, to compel all companies not incorporated under the authority of an ordinance of the Territories to take out a license and pay a very large fee therefor.

We submit that the legislation is *ultra vires* at least in so far as the definition of 'foreign company' is concerned. Subsection 1 of section 2 of the ordinance reads as follows:

'1. "Foreign company" shall include any company or association incorporated for the purpose of carrying on any business to which the legislative authority of the Legislative Assembly of the Territories extends, otherwise than by or under the authority of an ordinance of the Territories.'

Chapter 22, sec. 6, 54 and 55 Vic. and chap. 28, 60 and 61 Vic., section 6 (1) constitute the foundations for the legislative jurisdiction of the Territories, and it will be noted that these Acts empower the Legislative Assembly 'subject to the provisions' of the 'North-west Territories Act' or of any other Act of the Parliament of Canada declared to be applicable to the Territories, to make ordinances for the government of the Territories' in relation to certain enumerated subjects the seventh of which is the incorporation of companies. The Companies' Act is undoubtedly applicable to the Territories, and we submit that any legislation passed in the Territories must necessarily therefore be subject to the provisions of chapter 119 and amendments thereto of the revised statutes of Canada. Take two cases now before us as examples. The H. W. McNeill Company, Limited, have a charter of incorporation under the great seal of Canada authorizing them to carry on the business of coal mining. The head office of this company is at Anthracite, within the Territories. The Calgary Brewing and Malting Company, Limited, is another company holding a charter of incorporation under the great seal of Canada. This company's head office is at Calgary and it is authorized to carry on business within the Dominion of Canada. The Great West Saddlery Company, Limited, another company whose head office is in the city of Winnipeg, but which carries on business at many points in the Territories, has a charter of incorporation under the great seal of Canada authorizing it to carry on business throughout the Dominion of Canada. If chapter 22 of the ordinances of 1901 is allowed to go into operation, the result will be to absolutely destroy the provisions of the Companies' Act of Canada, in so far as these companies are concerned, but not only is it sought to apply the provisions of the ordinance to such commercial companies as those mentioned, but also to fire insurance and kindred institutions. The result in the latter cases is to nullify entirely the effect of section 4 of the Insurance Act, Cap. 124, R.S.C., which provides that insurance companies with a Dominion license may 'carry on such business in Canada.' We do not admit of course that it is within the power of the Territorial Assembly to pass legislation taxing every company doing business within the Territories. Such legislation would come within the principle of the Bank of Toronto and Lamb, but the ordinance in question is not a taxing ordinance; it is a licensing ordinance pure and simple, and as it comes into force on the 1st day of October, 1901, we should be glad to have a reply from your department at an early date indicating whether or not it is to be permitted to go into operation.

Yours faithfully,

LOUGHEED & BENNETT.

The Deputy Minister of Justice to the Honourable Attorney General of the North-west Territories.

DEPARTMENT OF JUSTICE, OTTAWA, September 14th, 1901.

SIR, I am directed to inclose for your consideration copy of a communication dated 10th instant, received from Messrs. Lougheed & Bennett, of Calgary, calling attention to chapter 22, intituled 'The Foreign Companies Ordinances,' passed by the Legislative Assembly of the Territories at its last session. Will you be good enough to submit such observations as you think proper for consideration of the Minister in reporting upon this ordinance in view of the representations made.

I have, &c.,

E. L. NEWCOMBE,
Deputy Minister of Justice.

The Honourable Attorney General of the North-west Territories to the Deputy Minister of Justice.

OFFICE OF THE EXECUTIVE COUNCIL, REGINA, October 2nd, 1901.

SIR, I have the honour to acknowledge the receipt of your letter of the 14th ult., inclosing copy of a letter from Messrs. Lougheed & Bennett, advocates of Calgary, pointing out that in their opinion the Foreign Companies Ordinance, chapter 22 of the ordinances of 1901, is *ultra vires*, and asking for the submission of such observations thereon as I consider proper for the consideration of the Minister. Before considering any lengthy argument on the authority of the Legislative Assembly to pass this ordinance, I beg to point out, in so far as it appears objectionable to Messrs. Lougheed & Bennett, it follows the British Columbia Act, passed in 1897, now Part VI. of chapter 44 of the revised statutes, and the Ontario Act passed in 1900, being chapter 24 of the statutes of that year, both of which were allowed to go into operation. It is possible that there may be some argument applicable to Territorial legislation on this subject which is not applicable to similar provincial legislation; and I am aware that it has been contended in the past by the Dominion authorities that the provinces had no power to impose on Dominion companies conditions such as are imposed by these Acts. But in view of these facts, that the Acts mentioned have not been disallowed, and that practically the same question is involved, I have assumed that the present federal government preferred to leave such arguable matters to the courts to decide. If I am correct in this, and the Minister wishes to consider the question of authority, I shall be very pleased to furnish him with reasons why I consider that the ordinance under consideration is within the authority of the Legislative Assembly to pass.

I have, &c.,

F. W. G. HAULTAIN,
Attorney General.

BILL.

No. OF 1902.

AN ORDINANCE to amend Chapter 22 of the Ordinances of 1901, intituled 'An Ordinance respecting Foreign Companies.'

(Assented to 1902.)

The Lieutenant Governor by and with the advice and consent of the Legislative Assembly of the Territories, enacts as follows:—

1. Section 1 of the Foreign Companies Ordinance is hereby amended by striking out the words, 'may from time to time by prescribed by the Lieutenant Governor in Council,' where they occur therein, and substituting therefor the following words, 'and company would be required to pay if applying for an exploration or mining company ordinance.'

2. Section 6 of the said Ordinance is hereby amended by adding the following proviso to the first subsection, 'Provided that nothing in this ordinance contained shall be deemed to empower the registrar to refuse [illegible] any company complying with the provisions of this ordinance to carry on so much of its business as may be applied for within the legislative authority of the Legislative Assembly.'

Report of the Honourable the Attorney General of the Northwest Territories upon Chapter 22.

REGINA, April 3rd, 1902.

To His Honour the Lieutenant Governor in Council:

The undersigned has had under consideration the minute of the Privy Council for Canada, approved by His Excellency the Governor General on the 10th January, 1902, concurring in a report of the Canadian Minister of Justice thereto annexed, respecting chapter 22 of the ordinances of the North-west Territories for the year 1901, intituled: 'An Ordinance respecting Foreign Companies,' which minute was received by Your Honour on the 21st day of January last, and was thereafter referred to the undersigned for his report, which has been delayed owing to his absence from the Territories.

The objections of the Minister of Justice to the ordinance appear to be that it is *ultra vires* in attempting to impose regulations and restrictions on Dominion companies, and that it is an interference with Dominion policy, by discriminating as to taxation against Dominion companies in favour of territorial companies, and he suggests that it be amended so as to remove these objectionable features.

The undersigned, however, submits that the ordinance is not *ultra vires* but is quite within the power of the legislative assembly to pass. It is a limited [illegible] object of the ordinance is not merely one of taxation, but is also one of regulation, and it is submitted that since it is limited in its application to companies which the legislative assembly would have power to incorporate, the right of imposing conditions on companies to which it applies, though incorporated under the authority of parliament, is clearly conferred on the assembly by parliament.

The powers conferred on the Territorial Legislature, as far as the principle and review is concerned, are practically the same as those conferred on a provincial legislature by the British North America Act, and in the absence of Dominion legislation specially applying to the Territories, the position of the Territories does not differ from that of a province.

Reference is made by the Minister of Justice in his report to the British Columbia Act, part VI., revised statutes, chap. 44, and to the Ontario Act, 63 Vic., c. 24. Reference may also be made to the Manitoba Act, 60 Vic., c. 2, which was disallowed.

The Minister of Justice states that this ordinance more nearly resembles the Ontario Act than the British Columbia Act, but it is submitted with all due respect that if he had compared the ordinance in detail with the two Acts, which he stated he had not done, he would not have come to the conclusion he did. With one or two exceptions the difference between the ordinance and the British Columbia Act are mere matters of detail not affecting any principle of the law, while there is the radical difference of principle between the ordinance and the British Columbia Act on the one hand and the Ontario Act on the other, that the application of the former is limited to companies formed for the purpose of carrying on business to which

the legislative authority of the legislature extends, while that of the latter extends to companies incorporated by the Dominion under its exclusive jurisdiction. It was on this ground that the Manitoba Act referred to, which was similar to the Ontario Act in this respect, was disallowed.

The undersigned begs to refer to the report of the then Minister of Justice, Sir Oliver Mowat, dated 15th November, 1897, on the Manitoba Act. He says:

'It has been held that the Dominion has power to incorporate a company for the whole Dominion though the objects of the company are provincial, a provincial legislature having no power to authorize a company to do business outside of the province as regards each province. Sir John Thompson mentioned the cases in his report on the 16th July, 1887, on a Quebec Act. It may be competent for a provincial legislature to require that a license shall be obtained by such a company before it shall do business in the province. As to that it is not necessary at present to express any decided opinion either way; but there can be no doubt that where a company is incorporated by the Dominion in the execution of any one or more of its special and exclusive powers of legislation, enumerated in section 91, a provincial legislature has no authority to impose any such condition, and the Act should be amended so as to apply, so far as Dominion corporations are concerned, to such companies only as have been incorporated for provincial objects within the authority of a provincial legislature, or have access to the province.'

In a subsequent report, dated 8th March, 1898, on the same Act, Hon. David Mills, who had succeeded Sir Oliver Mowat as Minister of Justice, states as follows:

'When the objects of a corporation are provincial, but it desires corporate existence extending over the Dominion of Canada, it may be doubted whether the parliament of Canada can do more than create a company with the capacity to exercise such powers; and the undersigned is of opinion that any powers which may be conferred by parliament in such cases can be exercised only so far as the exercise of them is consistent with the general laws of the provinces; otherwise the provincial legislature would have no greater authority to prohibit the exercise of those powers than it has to prohibit those falling within the enumerated subjects of section 91 of the British North America Act.'

In his report, dated 20th October, 1897, on the British Columbia Act, Sir Oliver Mowat says:

'It appears to the undersigned, therefore, that the provisions of the statute with regard to the licensing of companies incorporated by the Dominion parliament are not intended to affect the execution of powers which could not be completely conferred by the provincial legislature, and that the Act was not intended to impose any condition upon the exercise by a Dominion corporation, of powers conferred by parliament within the scope of the subjects specially enumerated in section 91 of the British North America Act. If the Act were intended to apply to such companies it would be necessary to consider the propriety of its disallowance upon the grounds which led to the disallowance of a recent statute of the legislature of Manitoba (58-59 Victoria, chapter 4). See the report of Sir Charles Hibbert Tupper, when Minister of Justice, approved by Your Excellency on the 8th November, 1895, and the report of Mr. Dickey, his successor, approved on the 26th March, 1896. It is true that the parliament of Canada has authority, not apparently by reason of any of the special subjects of legislation enumerated in section 91, but by force of its general authority, to legislate for the peace, order and good government of Canada, to incorporate companies with powers which would otherwise be exclusively within provincial authority, where such powers are to be exercised by the company within two or more provinces of the Dominion, and it may be that such companies, under the provisions in question, would be required to take out licenses in order to entitle them to carry on their business in British Columbia. The undersigned observes, however, that no power is attempted to be conferred by this Act, which would authorize the licensing authority in refusing a license to such a company, where the company had complied with the requirements of the Act, which seem not unreasonable as to the filing of information and payment of fees, and although

there may be different views as to the power of a provincial legislature to impose such a restriction upon any company incorporated under the legislative authority of parliament, yet the undersigned considers, in view of the reasons which may be urged in favour of the provincial right, he would not be justified in recommending the disallowance of this Act, and he recommends that the Act be left to its operation, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the province for the information of his government.'

The undersigned does not deem it necessary to refer to the various decisions of the Judicial Committee of the Privy Council and of other courts relating to the conflicting rights of the Dominion and provinces in the matter of incorporation and regulation of companies, as they have been very frequently referred to and considered, but he submits that the views expressed in the reports above quoted are sufficient justification for his view that this ordinance should not be disallowed.

Beyond the question of the general validity of the ordinance, the undersigned is of opinion that the view taken by the Minister of Justice, that the registrar has power to restrict the license of any company to a part of its objects, and even to refuse a license if he thinks fit, is not supported by the ordinance, for, in the opinion of the undersigned, no such power is given by the ordinance.

Section 4, which is not referred to by the Minister of Justice in his report, provides that:

'Any foreign company may become registered and obtain a license from the registrar authorizing it to carry on its business or part thereof within the Territories, on compliance with the provisions of this ordinance, and on payment to the registrar of such fees as may from time to time be prescribed by the Lieutenant Governor in Council.'

It is quite true that this contemplates a license for less than the whole business of the company, and will authorize the granting of an application when the company desires to carry on only a part of its business, and since, in the opinion of the undersigned, the assembly cannot authorize a foreign company, one of whose objects falls without its legislative authority, to carry on that portion of its business any more than it could authorize the incorporation of such company with such an object, it is necessary to provide for a license for part of the business of a company to meet the case of companies a part of whose objects fall without the legislative authority of the assembly, and in the opinion of the undersigned the application of this provision is limited to cases of this character.

The Minister of Justice concludes that the use of the words in section 6, 'If the registrar is satisfied that the company is one that should be registered,' indicates a discretionary power in the registrar to reject any application, but the undersigned submits that being read with section 4, the words can mean no more than that the registrar must first be satisfied that the company is one complying with the definition in respect of its manner of incorporation and its objects, and in having gain for one of its purposes, and that it has complied with the other provisions of the ordinance requiring the filing of documents and the payment of fees, and that if all of these conditions are fulfilled, the registrar is bound to grant the license applied for.

The undersigned, therefore, considers the first suggested amendment unnecessary, but beyond the fact of its being unnecessary, he sees no objection to it.

The other suggested amendment relates to fees, and inasmuch as the British Columbia Act was approved in the report of Sir Oliver Mowat above referred to and in part quoted, which report is impliedly adopted in the report of the Minister of Justice now under consideration, the undersigned assumes that the provisions of that Act in respect to license fees are satisfactory to His Excellency's government. The fees under that Act are fixed by the Act itself with reference to the capital of the company, being the same as those imposed on the incorporation of local companies, there being thus no discrimination between local and foreign companies.

The undersigned, therefore, sees no serious objection to the adoption of the principle of that Act in this respect by an amendment providing that the fees paid on appli-

cation for licenses shall be the same as the fees paid on application for incorporation under the provisions of The Companies' Act.

The undersigned recommends that a copy of this report, if approved, together with a copy of the proposed amendments hereto annexed, be transmitted by your Honour for the information of His Excellency's government, with a request that you be advised as speedily as possible whether the proposed amendments are approved, in order that if approved they may be passed by the assembly now in session.

Respectfully submitted.

F. W. G. HAULTAIN,
Lieutenant Governor.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 16th May, 1902.

DEPARTMENT OF JUSTICE, OTTAWA, 14th May, 1902.

To His Excellency the Governor General in Council.

The undersigned has had under consideration the despatch of the Lieutenant Governor of the North-west Territories, dated April 3rd last, transmitting a certified copy of an approved minute of the executive council of the territories in reply to the despatch founded upon the report of the predecessor in office of the undersigned, respecting chapter 22 of the ordinances of the North-west Territories, 1901, intituled: 'An Ordinance respecting Foreign Corporations.' This minute of the executive council approves of a report of the Attorney General of the North-west Territories submitting a copy of proposed amendments to the ordinance. Copy of the report and these proposed amendments is submitted herewith. Upon perusal of this report and the proposed amendments, it having been represented that the assembly was about to prorogue, the undersigned on April 16th last telegraphed to the Attorney General stating in effect that the proposed amendments were unsatisfactory; that he did not agree with the construction put upon the ordinance by the Attorney General, but that if the ordinance was amended so as to provide that it should not apply to any company which the Territorial assembly had not authority to incorporate, he would consider the matter further. No reply was received to this message, but on examining the ordinances passed at the recent session of the assembly, the undersigned observes that an amending ordinance was assented to on April 19th last whereby clause (c) of section 5 of the Foreign Companies Ordinance was repealed, and it is declared that the provisions of the said ordinance are intended to apply only to companies incorporated to carry out or effect one or more of the purposes or objects falling within the classes of subjects in relation to which the Legislative Assembly has power to make ordinances. No further amendment appears to have been passed, and the undersigned assumes therefore that the amendments proposed by the despatch of the Lieutenant Governor were abandoned. The amendments made by the aforesaid ordinance of 1902 do not touch the objections stated in the report of Mr. Mills. The repeal of clause (c) of section 5 is quite immaterial to the discussion, and the declaration limiting the application of the ordinance to companies incorporated to carry out or effect one or more of the purposes or objects falling within the classes of subjects in relation to which the Legislative Assembly has power to legislate does not, in the opinion of the undersigned, improve the ordinance from a constitutional point of view. The Attorney General admits that the object of the ordinance is not merely one of taxation, but is also one of regulation. He submits, however, that it is limited in its application to companies which the Legislative Assembly would have power to incorporate, and that therefore the assembly has clearly the right of imposing conditions upon the companies to which the ordinance applies, although incorporated under the authority of parliament. The undersigned entertains no doubt, however, that the ordinance has a broader application than stated

to the Attorney General, and he observes that the A[illegible] G[illegible] [illegible] his suggestion to give effect by amendment to [illegible] by the Attorney General. The authority of the Legislative Assembly [illegible] incorporation of companies does not extend beyond [illegible] territorial objects. The foreign companies which it is [illegible] the ordinance in question are defined [illegible] on any business to which the legislative authority of the [illegible] could extend [illegible] incorporated by or under the authority of an ordinance [illegible] companies having gain for their object, [illegible] their business in the Territories until registered [illegible] The Attorney General states that it is provided [illegible] ness of a company to meet the case of companies part of which [illegible] operates to a Dominion company having powers, part of which would [illegible] thority of the assembly to confer, and part of which would be [illegible] In such a case, however, if the ordinance is to have effect [illegible] company might be unable to exercise any of the [illegible] tory, [illegible] expressly provided that [illegible] detention of the ordinance shall not carry on any part of its business [illegible] without such case. The ordinance, therefore, [illegible] in the view presented [illegible] Attorney General may directly interfere with matters [illegible] the legislative [illegible] assembly, and the undersigned considers further that [illegible] reports of his predecessors, to some of which the Attorney General [illegible] regulating the business of Dominion companies which [illegible] Attorney General to be one of the objects of this legislation, [illegible] assembly.

The Manitoba Act to which the Attorney General refers, and in respect of which [illegible] the reports of Sir Oliver Mowat and Mr. Mills, was disallowed upon the report of the latter Minister, and in that report, an extract from which is quoted, Mr. Mills stated expressly that he did not consider it necessary to state any opinion as to whether it was competent to a provincial legislature, when the franchises sought by a Dominion company are of a provincial character, to require that a license should be obtained by such company before it is permitted to do business in the province. The undersigned does not consider it necessary to add anything further to the report of his predecessor respecting the Act of British Columbia. He may observe, however, that the question, together with previous reports, was reviewed at considerable length in Mr. Mills' report of November 22nd, 1901, upon the Ontario statute, 63 Victoria, chapter 24, in which the Minister arrived at the conclusion, approved by Your Excellency in Council, that the Act in question was *ultra vires*, and that so far as it had any operation as to Dominion corporations, it was likely to interfere with the carrying into effect of the policy of Dominion legislation, unquestionably competent to parliament, with regard to the incorporation of companies for trading to do business in Ontario. The same observations and the reasons upon which it was intended apply to the ordinance under consideration.

The undersigned, therefore, for the reasons stated by his predecessor, and the further reasons referred to in this report, recommends that the Foreign Companies Ordinance be disallowed, and that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the Northwest Territories for the information of his government.

C. FITZPATRICK,
Minister of Justice.

Proclamation disallowing Ordinance No. 22.

AT THE GOVERNMENT HOUSE AT OTTAWA,

The 31st day of May, 1902.

PRESENT:

His Excellency the Governor General in Council:

Whereas the Lieutenant Governor of the North-west Territories, with the Legislative Assembly of the Territories, did on the 12th day of June, 1901, pass an ordinance which has been transmitted, chapter 22, and intituled: 'An Ordinance respecting Foreign Companies";

And whereas the said ordinance has been laid before the Governor General in Council, together with a report from the Minister of Justice recommending that the said ordinance be disallowed:

Therefore, His Excellency the Governor General in Council has been pleased to declare his disallowance of the said ordinance and the same is hereby disallowed accordingly.

Whereof the Lieutenant Governor of the North-west Territories and all other persons whom it may concern are to take notice and govern themselves accordingly.

JOHN McGEE,
Clerk of the Privy Council.

I, Sir Gilbert John Elliot, Earl of Minto, Governor General of Canada, do hereby certify that the ordinance passed by the Legislative Assembly of the North-west Territories in the first year of His Majesty's reign, chaptered 22, and intituled: 'An Ordinance respecting Foreign Companies,' was received by me on the 13th day of July, 1901.

Given under my hand and seal at Ottawa, this 31st day of May, 1902.

MINTO.

NORTH-WEST TERRITORIES.

2 EDWARD VII., 1902.

4TH SESSION—4TH LEGISLATIVE ASSEMBLY.

EXTRACT *from a report of the Honourable the Minister of Justice, dated 27th November, 1902, approved by His Excellency the Governor General in Council on 12th December, 1902.*

These ordinances were received by the Secretary of State for Canada on 13th May last. They may be dealt with as follows:—

Chapter 4, 'An ordinance respecting public health.'

Section 19 enacts that 'When any part of the Territories is exposed to any contagious, infectious or epidemic disease then existing in any place outside the Territories, the Lieutenant Governor in Council may declare that such disease exists in such place as afor said and prohibit all ingress to the Territories therefrom for a period to be named in such order.'

The undersigned considers it very doubtful whether the Territorial Assembly has authority to prohibit ingress to the Territories, such legislation seems to extend beyond private and local matters and all other subjects confided to the jurisdiction of the assembly. Since, however, this section is merely a re-enactment of section 19 of the ordinance respecting public health (Consolidated Ordinances of the North-west Territories, 1898, chapter 19) the undersigned does not recommend disallowance, but he suggests for the consideration of the territorial government that this section should be repealed.

Chapter 8, 'An Ordinance to amend chapter 22 of the Ordinances of 1901, intituled: 'An Ordinance respecting Foreign Companies.'

This ordinance is reserved for a separate report.

Chapter 9, 'An Ordinance respecting the National Trust Company, Limited.'

This ordinance recites that the National Trust Company, Limited, was incorporated by letters patent in the province of Ontario, and it is enacted that the company is authorized and empowered to carry on and transact its business in the North-west Territories of Canada to the same extent as under its charter it is empowered to carry on and transact its business in Ontario. The Act is, therefore, subject to the objections stated with regard to the Ontario statute respecting the Royal Trust Company, but the undersigned for reasons already stated does not, therefore, recommend disallowance.

C. FITZPATRICK,
Minister of Justice.

Report of the Honourable the Minister of Justice upon Chapter 8, approved by His Excellency the Governor General in Council on the 5th December, 1902.

DEPARTMENT OF JUSTICE, OTTAWA, 26th November, 1902.

To His Excellency the Governor General in Council:

The undersigned has had under consideration chapter 8 of the ordinances of the North-west Territories, 2 Edward VII, assented to 19th April, 1902, intituled: 'An

Ordinance to amend chapter 22 of the ordinances of 1901, intituled: 'An Ordinance respecting Foreign Companies.'

This ordinance amends the Foreign Companies' Ordinance of 1901, by declaring that the provisions of the said ordinance are intended to apply only to companies incorporated to carry out or effect one or more of the purposes or objects falling within the classes of subjects in relation to which the legislative assembly has power to make ordinances. Inasmuch as the Foreign Companies' Ordinance so amended has been disallowed by Your Excellency, and the amending ordinance can have no operation except so far as it may implicitly revive the disallowed ordinance, the undersigned recommends that the said ordinance (chapter 8) be disallowed.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

Proclamation disallowing Ordinance No. 8.

AT THE GOVERNMENT HOUSE AT OTTAWA, the 5th day of December, 1902.

PRESENT:

The Governor General in Council.

Whereas the Legislative Assembly of the North-west Territories, did, at the session thereof begun and holden at Regina on the 20th day of March, and closed on the 19th day of April, 1902, pass an Ordinance which has been transmitted, chaptered 8, and intituled 'An Ordinance to amend chapter 22 of the Ordinances of 1901, intituled: 'An Ordinance respecting Foreign Countries.'

And whereas the said ordinance has been laid before the Governor General in Council, together with a report from the Minister of Justice recommending that the said ordinance be disallowed.

The Governor General in Council has thereupon this day been pleased to declare his disallowance of the said ordinance and the same is hereby disallowed accordingly.

Whereof the Lieutenant Governor of the North-west Territories and all other persons whom it may concern are to take notice and govern themselves accordingly.

JOHN J. McGEE.
Clerk of the Privy Council.

I, Sir Gilbert John Elliot, Earl of Minto, Governor General of Canada, hereby certify that the ordinance passed by the Legislative Assembly of the North-west Territories, at the session thereof begun and holden at Regina on the 20th day of March and closed on the 19th April, 1902, chaptered 8, and intituled: 'An Ordinance to amend chapter 22 of the ordinances of 1901, intituled: 'An Ordinance respecting Foreign Companies,' was received by me on the 13th day of May, 1902.

Given under my Hand and Seal this 5th day of December, 1902.

MINTO.

NORTH-WEST TERRITORIES.

3 EDWARD VII., 1903.

1ST SESSION—5TH LEGISLATIVE ASSEMBLY.

EXTRACT *from a report of the Honourable the Minister of Justice, dated 8th January, 1904, approved by His Excellency the Governor General in Council on the 23rd March, 1904.*

(First Session.)

These Acts may be left to their operation except chapter 44, intituled: 'An Ordinance respecting Foreign Companies;' and chapter 85 intituled: 'An Ordinance to amend chapter 87 of the Consolidated Ordinances, 1898, intituled: 'An Ordinance for the Prevention of Prairie and Forest Fires.'

The undersigned proposes to further consider the former of these Acts in view of the disallowance by Your Excellency of the Foreign Companies' Ordinance, 1901, with which the present ordinance very generally corresponds.

As to the second ordinance above quoted the undersigned is submitting a separate report to Your Excellency.

Chapter 44, intituled: 'An Act respecting the Toronto General Trusts Corporation.'

The undersigned considers that this ordinance may be left to its operation subject to the remarks made with regard to chapter 53 of Manitoba relating to the Dominion Permanent Loan Company, the same objection applying to the present ordinance.

(Second Session.)

Received by the Secretary of State for Canada on 24th December, 1903.

The undersigned does not see any reason at present for recommending any of these ordinances.

The undersigned accordingly recommends that the Acts and ordinances above mentioned or referred to be left to such operation as they may have, except as to the further ordinances, which, as above stated, have been made the subject of a separate report or reserved for further report.

C. FITZPATRICK,
Minister of Justice.

Extract from the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 23rd March, 1904.

DEPARTMENT OF JUSTICE, OTTAWA, 1st March, 1904.

To His Excellency the Governor General in Council:

The undersigned has the honour to call attention to chapter 25 of the ordinances of the North-west Territories, assented to 19th June last, intituled: 'An Ordinance to

amend chapter 87 of The Consolidated Ordinances, 1898, intituled: 'An Ordinance for the protection of Prairie and Forest Fires.'

This ordinance provides in effect that if a fire be caused by the escape of sparks from any locomotive engine, the person in charge, or who should be in charge, of such engine shall be guilty of an offence and liable to a penalty. This ordinance may, of course, have its application with regard to railways under the legislative control of the territorial assembly, but it is very doubtful whether it can affect railways within the exclusive legislative authority of parliament. The courts may, however, conveniently determine any such objection, and therefore the undersigned does not recommend disallowance. He recommends, however, that a copy of this report, if approved, be transmitted to the Lieutenant Governor of the North-west Territories for the information of his government.

Humbly submitted.

C. FITZPATRICK,
Minister of Justice.

YUKON TERRITORY LEGISLATION.

1 EDWARD VII., 1901.

Mr. George Craig to the Honourable the Minister of Justice.

COURT-HOUSE, DAWSON, Y.T., July 9th, 1901.

SIR,—About two months ago an ordinance was introduced into the Yukon Council affecting the court stenographers, which ordinance a committee of the Council laid before the members of the local bar and the judges. I understand that the ordinance was introduced by Mr. Justice Dugas, but Mr. Justice Craig, at the request of the Bar, gave his views upon the ordinance, and it went no further at that time. This week, without notice to any one, an ordinance, in some respects similar, was passed by the Council at one sitting. This last ordinance very materially affects the fees obtained by stenographers for work done in extra hours. I have had a consultation with Mr. Justice Craig regarding the work of the courts in this connection, and he is strongly of the opinion that so long as only two judges sit in this territory, two stenographers can do all the work; in fact that even if three judges are appointed they will not sit concurrently, and two stenographers could still overtake the work. Our salaries, considering the cost of living in here, have been small, and there would be little inducement for a man competent to do court reporting to remain here, but for the additional fees obtained from copies and examinations. Up to this time the two stenographers have met all the requirements of the Bar in attending to the court, reporting examinations and copies for appeal, although we have had to work constantly very late hours at night, which, of course, we don't object to do, provided that the remuneration derived from the extra work is sufficient to compensate us for the loss of rest and health which such continuous work entails. We think it is of importance to the government that the extra cost of an additional stenographer should be saved to it, but if the fees are continued at the present rate, a third stenographer will be needed, as there will be absolutely no inducement to a man to work overtime for the small fees, and copies of appeals will have to be prepared in the ordinary office hours. I may say that the court here sits continuously with the exception of four days each month, and very often Mr. Justice Craig, to whom I am attached, sits even during that time. Of course my appointments comes from the Minister of the Interior, and if I am appointed by your department as court stenographer specially, I will still be a federal officer. The question which I wish to raise is whether since I draw my pay from the federal exchequer, the Yukon Council has any right to interfere with my emoluments. The matter not only effects me, but I think it also affects the government in the manner which I have indicated in my letter.

I may say that I have consulted with Mr. Congdon, advisor, Mr. Wade, Crown prosecutor, and other leading members of the Bar, as well as Mr. Justice Craig, who think that the fees allowed for copies are entirely too small for this territory, being very much less than the fees allowed by the rules of the court in the North-west Territories, and I may add that your department allows us 20 per cent a folio. We are quite content to admit to a small reduction for first copies, and a very material reduction for additional copies, but we think the reduction, as made, is altogether too great.

I have, &c.,

GEO. CRAIG.

P.S. I might add that of course the ordinance does not affect the fees of the stenographer in the Gold Commissioner's office; he still receives 25 cents a folio.

G.C.

Deputy Minister of Justice to the Commissioner of the Yukon Territories.

DEPARTMENT OF JUSTICE, OTTAWA, 15th August, 1901.

SIR,—I have the honour to inclose herewith copy of a letter from Mr. George Craig, one of the stenographers of the territorial court of the Yukon Territory, of 9th ultimo, in which he complains of an ordinance recently passed by the Commissioner in Council regulating, among other things, the fees to be taken by stenographers. You will observe that Mr. Craig complains that the fees allowed by this ordinance for copies are entirely too small for the Yukon Territory, and less in fact than those allowed in the North-west Territories. He also questions the authority of the Commissioner in Council to enact such an ordinance.

Will you be good enough to give me your report upon the matter for the consideration of the Minister in dealing with this ordinance.

I have, &c.,

E. L. NEWCOMBE,
Deputy Minister of Justice.

Report of Mr. H. W. Newlands, legal adviser, Yukon Territory, upon Ordinance No. 26.

DAWSON, Y.T., 21st November, 1901.

SIR,—I beg to make the following report on ordinance No. 26, or 1901, respecting stenographers.

Section 6 of the Yukon Act provides that the Commissioner in Council shall have the same powers to make ordinances for the government of the Yukon Territory as was possessed by the Lieutenant Governor and assembly of the North-west Territories at the date of the passing of that Act, except as limited by order of the Governor in Council. One of these powers is contained in sub-section 10 of section 15 of the North-west Territory Act, as follows:—

'The administration of justice in the Territories, including the constitution, organization and maintenance of territorial courts of civil jurisdiction, including procedure therein, but not including the power of appointing any judicial officers.' This should be read with section 13 of the Yukon Territory Act, which is as follows:—'The Governor in Council may appoint such officers of the court as may be deemed necessary, and may define and specify the duties and emoluments of the officers so appointed.'

Under this last mentioned section the Governor in Council appointed stenographers and fixed their salaries. He did not, however, define and specify their duties nor provide for their receiving any other emolument than their salary so fixed. It would, therefore, in my opinion, be within the powers of the Commissioners in Council under subsection 10 of section 13 of the North-west Territory Act to specify their duties, and to provide at what rates they should supply copies of evidence to practioners. These matters would come under the head of procedure in the courts, and are provided for by the assembly of the North-west Territories, either directly, or by delegating their power to the judges. Previous to the passing of this ordinance the judges of the territorial court fixed the fees to be charged under sections 533 and 534 of the Judicature Ordinance.

Section 1 of ordinance No. 256 of 1901, provides for the appointment of stenographers by the Commissioner. The question, therefore, has been to consider whether that clause is *ultra vires*. If a stenographer can be considered a 'judicial officer' then the Commissioner in Council had no power to pass that section. I do not think he can be so considered. None of his duties are judicial: his [illegible] not discretionary, but merely the mechanical taking down of evidence and tr[illegible]ing the same. The

Governor in Council appoints him, not because he is a judicial officer, but because under section 13 of the Yukon Act he 'may appoint such officers of the court as may be deemed necessary,' and to take power to appoint additional stenographers would not conflict with this section.

Therefore, I am of the opinion that Ordinance No. 26 of 1901 is within the powers of the Commissioner in Council.

Obediently yours,

W. H. NEWLANDS,
Legal Advisor.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 25th January, 1902.

DEPARTMENT OF JUSTICE, OTTAWA, 16th January, 1902.

To His Excellency the Governor General in Council:

The undersigned has under consideration the following ordinances of the Yukon Territorial Council, passed during the year 1901:—Nos. 1 to 25, 27 to 32, 35 to 42 inclusive.

The undersigned does not consider it necessary at present to comment upon any of those ordinances except the following.—

No. 26, 'An ordinance respecting the appointment of official stenographers and the taking of evidence in courts of justice.'

This ordinance professes to authoriz[illegible] [illegible]ioner of the Yukon Territory to appoint official stenographers of the territ[illegible] and to define the duties of the stenographers and establish fees.

Section 13 of the Yukon Territory Act provides that the Governor in Council may appoint such officers of the court as may be deemed necessary, and may define and specify the duties and emoluments of the officers so appointed. The stenographers of the territorial court are and have been under the jurisdiction of the undersigned, and their appointments have been made or authorized by Your Excellency in Council.

A letter was received from Mr. George Craig, one of the stenographers, objecting to this ordinance, and the undersigned communicated with the Commissioner of the Territory for the purpose of obtaining information, or the views of the Council there, as to the reasons for the enactment and the propriety of its provisions. Copy of Mr. Craig's letter and of letter from the Deputy Minister of Justice to the Commissioner, together with the reply to the latter, of the Territorial Secretary inclosing copy of an opinion from the legal adviser of the Commissioner, submitted herewith. The legal adviser appears to overlook the fact that the powers of legislation conferred upon the Commissioner in Council are *subject to the provisions of the Yukon Territory Act*. It is, in the opinion of the undersigned, intended by parliament that the officers of the court shall be appointed and their duties and emoluments specified and defined by the Governor in Council. It is inconsistent with such intention that the local Council should interfere in these matters. The question as to the propriety of the ordinance, apart from the legal authority of the Commissioner in Council to enact it, upon which the undersigned principally desired information, is not referred to by the Commissioner, but the undersigned considering the ordinance to be *ultra vires*, and upon the best information which he can obtain, not desirable in substance, recommends that it be disallowed.

No. 33, 'An Ordinance respecting the legal profession.'

This ordinance deals with qualifications and admission of barristers and solicitors within the Territory, the fees to be paid, and the discipline of the profession. An ordinance governing these matters was enacted by Your Excellency in Council

on 14th April, 1899, which is still in force. The authority of the Commissioner in Council to make ordinances is subject to such limitations as may be imposed by order of the Governor in Council. The present ordinance, therefore, is *ultra vires* of the Commissioner in Council, in so far as it is inconsistent with the ordinance of 14th April, 1899, and, therefore, to that extent it has no legal operation. It should be pointed out to the Commissioner of the Territory that he has no authority to repeal or modify ordinances passed by Your Excellency's government, and that where in such cases there is dissatisfaction with the provision made, it would be proper to make representations, but not to attempt to override the paramount provision by Your Excellency in Council. It may be that the provisions of the Territorial ordinance now in question are more suitable to the circumstances of the territory than the governing ordinance passed by Your Excellency in 1899, and perhaps steps should be taken to give effect to the Territorial ordinance. If that be the view of the Commissioner in Council, proper representations may be made to Your Excellency's government which will be considered upon the question as to whether this ordinance should be disallowed or confirmed by Your Excellency's government.

No. 34, 'An ordinance respecting the procedure and practice to be observed in connection with the exercise of the civil jurisdiction of police magistrates appointed under chapter 41 of Dominion Acts of 1901, entitled: "An Act to amend the Yukon Territory Act, and to make further provision for the administration of justice in the said territory."'

This ordinance in effect applies the procedure of the territorial court in civil matters to the courts of the police magistrates in like cases. A communication from a member of the Bar of Dawson has been referred to the undersigned in which he states in effect that this procedure is too complicated and expensive, admitting also of too many delays for a magistrate's court, where the object should be simplicity and summary disposition of causes. The undersigned is disposed to agree with this view, and he commends the matter to the attention of the local authorities who have jurisdiction to deal with the subject, and whose judgment as to the local requirements ought to be sound.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Commissioner of the Yukon Territory for his information.

Respectfully submitted,

C. FITZPATRICK,
Minister of Justice.

Proclamation disallowing Ordinance No. 26.

AT THE GOVERNMENT HOUSE AT OTTAWA.

The 25th day of January, 1902.

PRESENT:

His Excellency the Governor General in Council.

Whereas the Commissioner in Council of the Yukon Territory did on the 4th day of July, 1901, pass an ordinance, which has been transmitted, numbered 26, and intituled 'An ordinance respecting the appointment of official stenographers and the taking of evidence in Courts of Justice,' and

Whereas the said ordinance has been laid before His Excellency, the Governor General in Council, together with a Minute of Council recommending that the same be disallowed.

Now therefore, His Excellency the Governor General in Council, in virtue of the authority conferred upon him by section 7 of the 'The Yukon Territory Act,' 61 Victoria, chapter 6, has thereupon this day been pleased to declare his disallowance of the said ordinance, and the same is hereby disallowed accordingly.

Whereof the Commissioner of the Yukon Territory and all other persons whom it may concern are to take notice and govern themselves accordingly.

JOHN J. McGEE,
Clerk of the Privy Council.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 25th January, 1902.

DEPARTMENT OF JUSTICE, OTTAWA, 12th January, 1902.

To His Excellency the Governor General in Council:

The undersigned, referring to the report of his predecessor in office, of 16th January last, approved by Your Excellency on 25th January, respecting the ordinances of the Yukon Territory, and particularly to the observations upon ordinance No. 33, intituled: 'An ordinance respecting the legal profession,' has the honour to inform Your Excellency that he has received a telegram from the Commissioner of the Yukon Territory referring to this ordinance, stating that there is no intention to contest the right of Your Excellency in Council to pass ordinances on the subject, but that the ordinance in question is satisfactory to the profession, and that it is desirable to have same confirmed, so that the annual fee due 30th instant may be collected. Inasmuch, therefore, as this ordinance is acceptable to the local authorities and the profession in the Territory, and as the undersigned sees no good reason to object to the nature of its provisions, he recommends that the ordinance be ratified and confirmed and receive effect by virtue of the authority vested in Your Excellency in Council.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 5th October, 1903.

DEPARTMENT OF JUSTICE, OTTAWA, 14th September, 1903.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the following ordinances of the Yukon Territorial Council, passed during the year 1901, viz.:—

Ordinance No. 43, intituled: 'An Ordinance empowering the Northern Commercial Company to lay and maintain pipes for conducting steam for heating purposes and water (water to be used for fire protection purposes only) under, along and over the streets, alleys, highways and public places of the town of Dawson.'

Ordinance No. 44, intituled: 'An Ordinance respecting commissioners to administer oaths.'

Ordinance No. 45, intituled: 'An Ordinance to incorporate the city of Dawson,' and

Ordinance No. 46, intituled: 'An Ordinanace to amend Ordinance No. 31 of 1901, entitled: 'The unincorporated towns Ordinance.'"

The undersigned does not deem it necessary to [illegible] these ordinances, and recommends that they be left to their operation.

Humbly submitted.

C. FITZPATRICK,
Minister of Justice.

YUKON TERRITORY LEGISLATION.

2 EDWARD VII., 1902,

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 5th October, 1903.

DEPARTMENT OF JUSTICE, OTTAWA, 14th September, 1903.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the following ordinances of the Yukon Territorial Council, passed during the year 1902, viz.:—Nos. 1 to 32 inclusive.

The undersigned sees no reason at present to comment upon any of these ordinances, except—

No. 7, entitled: 'An Ordinance respecting the Importation of and Traffic in Intoxicating Liquors.'

The undersigned is not satisfied of the validity of this Ordinance, but is making inquiries, and will submit a further report upon it, and

No. 27, entitled: 'An Ordinance respecting Schools.'

This Ordinance, although providing (see section 24) for the establishment of a separate school at the instance of a minority of the ratepayers of any school district, whether Protestant or Roman Catholic, does not apparently make all the provisions required by section 14 of the North-west Territories Act which, having regard to section 6 of the Yukon Territory Act, as enacted by 2 Edward VII., chapter 34, section 2, limits the authority of the Commissioner in Council to make Ordinances respecting education. No representations have, however, been made to the undersigned against this Ordinance, and, inasmuch as it may be held within the authority of the Commissioner in Council, as construed with the Dominion Acts above mentioned, the undersigned considers that this Ordinance may be left to such operation as it may have.

The undersigned, therefore, does not at present recommend that any of these ordinances be disallowed, and he recommends that a copy of this report, if approved, be transmitted to the Commissioner of the Yukon Territory, for the information of his government.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

Report of the Honourable the Minister of Justice upon Ordinance No.7, approved by His Excellency the Governor General in Council on the 23rd March, 1904.

DEPARTMENT OF JUSTICE, OTTAWA, 11th March, 1904.

To His Excellency the Governor General in Council:

The undersigned, referring to his report of 14th September last, approved by Your Excellency on 5th October, with regard to the Ordinances of the Yukon Territorial Council passed during the year 1902, has the honour to report that he has further con-

sidered and had correspondence with the Territorial Government with regard to Ordinance No. 7, of 1902, intituled: 'An Ordinance respecting the importation of and traffic in intoxicating liquors,' and he is of the opinion that this ordinance is in excess of the authority conferred upon the Territorial Council by the Yukon Act and its amendments. It is provided by 62-63 Victoria, chapter 11, section 3, that no intoxicating liquor shall be imported or brought into the territory, except by permission of the Governor in Council. It is true that by 2 Edward VII., chapter 34, section 2, the Commissioner in Council is authorized, subject to the provisions of any ordinance of the Governor in Council, notwithstanding anything to the contrary in any Act of Parliament, to make ordinances for the control and sale of and traffic in intoxicating liquor in the Territory, but this does not, in the opinion of the undersigned, authorize the local council to deal with the matter of importation.

The undersigned, therefore, recommends the disallowance of this ordinance as *ultra vires* of the Territorial Council, and he recommends that a copy of this report, if approved, be transmitted to the Commissioner of the Yukon Territory, for the information of his Government.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

Proclamation disallowing Ordinance No. 7.

AT THE GOVERNMENT HOUSE AT OTTAWA, the 23rd day of March, 1904.

PRESENT:

His Excellency the Governor General in Council.

Whereas the Commissioner of the Yukon Territory in Council did on the 5th day of July, 1902, pass an ordinance which has been transmitted, numbered 7 and intituled: 'An Ordinance respecting the importation of and traffic in intoxicating liquors.'

And whereas the said ordinance has been laid before the Governor General in Council, together with a report from the Minister of Justice, recommending that the same should be disallowed.

Therefore, the Governor General in Council has thereupon this day been pleased to declare his disallowance of the said ordinance, and the same is hereby disallowed accordingly.

Whereof the Commissioner of the Yukon Territory and all other persons whom it may concern are to take notice and govern themselves accordingly.

JOHN J. McGEE,
Clerk of the Privy Council.

YUKON LEGISLATION, 1903.

Report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on the 29th December, 1904.

DEPARTMENT OF JUSTICE, OTTAWA, 4th November, 1904.

To His Excellency the Governor General in Council:

The undersigned has had under consideration the Ordinances of the Commissioner in Council of the Yukon Territory passed during the year 1903, and is of the opinion that these may be left to such operation as they may have.

The undersigned is informed that Ordinance No. 14, intituled: 'An Ordinance respecting liens in favour of Miners,' has been held *ultra vires* of the Commissioner in Council by a recent judgment of Mr. Justice Craig, of the Territorial Court. He is further informed that the Minister of the Interior proposes to recommend to Your Excellency the confirmation of this ordinance as being within the authority of Your Excellency in Council to enact, and, therefore, pending further action he does not deem it necessary to consider the provisions of this ordinance or recommend its disallowance.

The undersigned recommends that a copy of this report, if approved, be submitted to the Commissioner of the Yukon Territory for his information.

Humbly submitted,

C. FITZPATRICK,
Minister of Justice.

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1901-1903.

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Hon. David Mills, K.C.	Nov. 18, 1897	Feb. 10, 1902.
Hon. Chas. Fitzpatrick, K.C.	Feb. 11, 1902	

Deputy Minister of Justice.

	From	To
E. L. Newcombe, M.A., LL.B., K.C.	March 19, 1903	

TABLE OF DISALLOWED ACTS, 1901-1903.

BRITISH COLUMBIA.

Acts.	Title.	Reasons for Disallowance.	Date of Report of Minister of Justice.	Page.
1 Edwd. VII., 1901, chap. 80	An Act to incorporate the Lake Bennett Railway Company.	Not in the public interest or consistent with policy of Dominion Government. Doubtful if Provincial Government competent to authorize constructions in Territory in dispute between United States and Canada and to keep traffic under local control.	May 3, 1902	68
2 Edwd. VII., 1902, chap. 34	An Act to regulate Immigration into British Columbia.	Inadvisable to leave Act to its operation. Act is inconsistent with general policy of Dominion Government respecting Immigration; involves questions of foreign relations.	Nov. 14, 1902	80
Chap. 38.	An Act relating to the Employment on Works carried on under Franchises granted by Private Acts.	Act solely an tolavously directed against Asiatics, including Japanese. Policy of Act contrary to Imperial interest and might interfere with International relations. Legislation affects aliens and therefore *ultra vires* of Provincial Legislature. Also interferes with general policy of Dominion respecting Immigration.	Nov. 14, 1902	80
Chap. 48.	An Act to further amend the 'Coal Mines Regulation Act.'	Legislation is *ultra vires* under decision of Judicial Committee in case of Union Colliery Co. of British Columbia v. Bryden, 1899, Ap. Cases, 580. Is legislation of discriminating character, incompetent to a Provincial Legislature, upon grounds of public policy.	Nov. 14, 1902	80
3 Edwd. VII., 1903, chap. 12	An Act to regulate Immigration into British Columbia.	Same reasons as set forth in Reports of Minister of Justice in 1900, and of Nov. 14, 1902. *See* Supra.	June 5, 1903 / Oct. 1, 1903	88
Chap. 14.	An Act relating to the Employment on Works carried on under Franchises granted by Private Acts.	*See* Reports of Minister of Justice, Jan. 5, 1901, page 135, Vol. III., and of Nov. 14, 1902. *See* Supra.	Oct. 1, 1903	88
Chap. 17.	An Act further to amend the 'Coal Mines Regulation Act.'	*See* Report of Minister of Justice on chapter 48 of 1902. *See* Supra.	Oct. 1, 1903	88

NORTH WEST TERRITORIES.

1 Edwd. VII., 1901, chap. 22.	An Act respecting Foreign Corporations.	Act is *ultra vires* of Provincial Legislature. So far as it had any operation as to Dominion corporations it was likely to interfere with policy of Dominion legislation, unquestionably competent to Parliament. *See* also Report of Minister of Justice on Manitoba Act chap. 2, of 1897.	May 19, 1902	110
2 Edwd. VII., 1902, chap. 8.	An Act to amend chapter 22 of the ordinances of 1901, intituled, 'An Act respecting Foreign Companies.'	Act respecting Foreign Corporations disallowed by O. C., Dec. 12, 1902. Amending ordinance can have no operation except so far as it may impliedly revive the disallowed ordinance.	Nov. 24, 1902 / Nov. 26, 1902	113

YUKON TERRITORY.

1 Edwd. VII., 1901, No. 2.	An ordinance respecting the appointment of official stenographers and the taking of evidence in Courts of Justice.	Ordinance is *ultra vires* of the Commissioner in Council and is not desirable in substance.	Jan. 16, 1902	119
2 Edwd. VII., 1902, No. 7.	An ordinance respecting the importation of and traffic in Intoxicating Liquors.	Ordinance is *ultra vires* of the Commissioner in Council as in excess of authority conferred by Yukon Act and its amendments.	Mar. 11, 1904	122

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ONTARIO.

Acts.	Title.	Reasons for Comment or Objections.	Page.
1 Edwd. VII., 1901, chap. 21	An Act to amend the Ontario Insurance Acts.	Objected to on grounds that 1st section is null and void. Legislature has no jurisdiction to impair existing contract, or to pass Act affecting pending legislation.	5
Chap. 30.....	An Act to amend the Municipal Drainage Act.	Objected to that sections 1 and 5 limit right of appeal to the Supreme Court. Objection not deemed sufficient, as it is competent to Legislature to declare what are the effect of statutory proceedings authorized by Legislature.	5
2 Edwd. VII., 1902, chap. 101	An Act to incorporate 'The Huronian Co., Ltd.'	Authority assumed by sec. 5 to navigate and employ steam vessels to transport goods to any place in Canada beyond limits of Ontario and elsewhere, is in excess of authority conferred by the B.N.A. Act.	12
Chap. 103	An Act to authorize The Royal Trust Company to do business in the Province of Ontario.	Royal Trust Co. was incorporated by the Legislature of the Province of Quebec. If Co. exists for provincial objects of Quebec, it is questionable if Legislature of Ontario has authority to extend these, confer powers extra-provincial as to Quebec, or to interfere with consolidation of company.	12
3 Edwd. VII., 1903, chap. 16	An Act to amend the Loan Corporations Act.	Objected to on ground of difficulty of ascertaining meaning of term "similar name" in sec. 9 and because Act trenches on Criminal Law or regulation of Trade and Commerce.	20
Chap. 19.. ..	The Consolidated Municipal Act, 1903.	Act trenches on subjects of Militia and Defence and navigation and shipping, which, by B.N.A. Act is assigned to the exclusive legislative authority of Parliament, and a legislature has no power of taxation except for provincial, municipal or local purposes.	20
Chap. 7.....	An Act to amend the Statute Law.	See Report of Minister of Justice on chap. 24 of 63 Victoria, 1900, Ontario. Provincial Legislature should not exact fees discriminating between the trading corporations established by Parliament and those established by Provincial Legislatures. Impossible to admit, in general interests of Canada, principle of interference with Dominion policy by discriminating taxation on the part of a Province, in a matter within Dominion jurisdiction.	21

QUEBEC.

3 Edwd. VII., 1903, chap. 48.	An Act respecting the Liquidation of Non-Commercial Companies and Corporations.	Trenches on the subject of Bankruptcy and Insolvency	27

NOVA SCOTIA.

2 Edwd. VII., 1902, chap. 144.	An Act to incorporate the Maritime Newfoundland Shipping Company, (Limited.)	Power to carry out objects mentioned in Act is not limited to Nova Scotia. Legislature has no power to incorporate except for provincial objects.	29
3 Edwd. VII., 1903, chap. 174.	An Act to incorporate the City of Sydney.	Validity of provision that an occupant may be assessed in respect of his occupation is open to question. Proviso subjecting Imperial or Dominion property to taxation for special rates is manifestly *ultra vires*.	30

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NEW BRUNSWICK.

Act.	Title.	Reasons for Comment or Objection.	Page.
1 Edwd. VII., 1901, chap. 21.	An Act to consolidate and amend chapter 44 of the Consolidated Statutes relating to absconding, concealed and absent debtors	Doubtful if some of the provisions of Act do not trench on subject of Bankruptcy and Insolvency.	32
Chap. 27	An Act in addition to and in amendment of chap. 50 of Consolidated Statutes, intituled "The Court of Divorce and Matrimonial Causes"	Act is *ultra vires*, affecting as it does the validity of proceedings and decrees relating to subject of divorce	32
2 Edwd. VII., 1902, chap. 101.	An Act relating to the Royal Trust Co.	Is subject to same objections and remarks as stated with regard to Ontario Statutes, 1902, chap. 103, *which see*.	34
Chap. 104	An Act to incorporate The Moncton and Eastern Railway Company	Incompetent to Provincial Legislature to authorize the construction and operation of a railway extending from a point within the Province to a point upon the boundary between that Province and another Province	34
Chap. 105	An Act to incorporate The Fredericton and Western Railway Company	do do do	34
3 Edwd. VII., 1903, chap. 73	An Act to incorporate the Town of Dalhousie for water, sewerage, fire, light and police purposes.	Section 31, authorizing commissioners to make by-laws to enforce observance of the Lord's Day and to punish vice, appears to affect the subject of Criminal Law.	35

MANITOBA.

Act.	Title.	Reasons for Comment or Objection.	Page.
1 Edwd. VII., 1901, chap. 60.	An Act respecting The Manitoba Central Railway Company	Open to the objection arising out of incapacity of Legislature to authorize construction of railways which are not local works, which connect two Provinces, or extend beyond the limits of a Province	36
Chap. 61.	An Act respecting The Morden and Northwestern Railway Company.	do do do	36
2 Edwd. VII., 1902, chap. 65.	An Act to incorporate The Occidental Fire Insurance Company	Act does not specially limit business of Company to the Province of Manitoba. Authority of Provincial Legislature in this respect does not extend beyond incorporation of companies with provincial objects.	37
Chap. 67	An Act to incorporate The Prudential Life Insurance Company.	do do do	37
Chap. 70	An Act to incorporate The Standard Trusts Company	do do do	37
Chap. 73	An Act to incorporate The Universal Life Assurance and Annuity Company.	do do do	37
Chap. 68.	An Act to authorize The Royal Trust Company to do business in the Province of Manitoba	Is subject to same objections and remarks as stated with regard to Ontario Statutes, 1902, chapter 102, *which see*.	37

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Act.	Title.	Reasons for Comments or Objections.	Page.
Chap. 72. . . .	An Act respecting The Toronto General Trusts Corporation.	Is subject to same objections and remarks as stated with regard to Ontario Statutes, 1902, chapter 102, (*which see*).	37
3 Edwd. VII., 1903, chap. 53.	An Act respecting the Dominion Permanent Loan Company.	Act is objectionable in that it provides that the company, which has been incorporated by the Ontario Legislature, shall be a body corporate, and authorized to carry on business in the Province of Manitoba. Questionable if capacity of the company can be enlarged by the Legislature of another province.	44

BRITISH COLUMBIA.

Act.	Title.	Reasons for Comments or Objections.	Page.
1 Edwd. VII., 1901, chap. 45.	An Act respecting certain Railway Land Grants	Alleged that statute affects pending Litigation and rights existing under previous legislation and grants from the Province. Considered that legislation is objectionable in principle and not justified, except under very exceptional circumstances, but that proper remedy lies with the Legislature.	45, 57, 69, 70
Chap. 73. .	An Act to incorporate the Crow's Nest Southern Railway Company.	Act considered objectionable as conferring authority upon the company to construct and operate a line of railway connecting point on boundary between Province and the United States, and two points upon boundary between British Columbia and the North-west Territories. Deals also with subject of aliens, which is within exclusive legislative jurisdiction of the Dominion Parliament.	58
Chap. 25. .	An Act respecting the Fisheries of British Columbia.	Section 53 is *ultra vires* to extent of authority of Fishery Commissioners to grant licenses and leases to plant oyster beds in harbours of the Province. These, so far as they are public harbours belong to the Dominion, and are not subject to provincial Legislative authority. Certain provisions of Act are objectionable as being Fishery Regulations, authority of Provincial Legislature has been very clearly established by decision of Judicial Committee in the Fisheries case, and Provincial Legislature should not transgress limits which have been judicially declared.	45, 55, 61, 72, 74
Chap. 65.	An Act to amend the Arrowhead and Kootenay Railway Company Act, 1898.		72
Chap. 68.	An Act to incorporate the Chilkat and Kletini Railway and Navigation Company.		72
Chap. 69. . . .	An Act to incorporate the Coast Kootenay Railway Company (Limited).		72
Chap. 70. .	An Act to amend the Columbia and Western Railway Company Act, 1896.		72
Chap. 71.	An Act to incorporate the Comox and Cape Scott Railway Company.		72

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Chap. 72	An Act to incorporate the Crawford Bay Railway Company		72
Chap. 77.	An Act to incorporate the Imperial Pacific Railway Company	Deal with question of aliens, which is within exclusive legislative jurisdiction of Dominion Parliament. Power given to Lieutenant Governor to fix maximum rates for freight and passenger traffic would have to be construed with regard to Dominion Legislation, if the railway were brought under exclusive jurisdiction of Parliament. Dominion policy of immigration would be seriously interfered with, and paralyzed, if provisions of Act were not repealed, so far as respects exclusion of Japanese and all aliens.	72
Chap. 78.	An Act to incorporate the Kamloops and Atlin Railway Company.		72
Chap. 79	An Act to incorporate the Kootenay Central Railway Company.		72
Chap. 81.	An Act to incorporate the Midway and Vernon Railway Company.	Chapters 68 and 86 contain provisions respecting fixing of maximum rates, but do not contain clause respecting aliens	72
Chap. 83	An Act to incorporate the Queen Charlotte Islands Railway Company		72
Chap. 84.	An Act to incorporate the Vancouver and Grand Forks Railway Company.		72
Chap. 85.	An Act to incorporate the Victoria Terminal Railway Hay Company		72
Chap. 86	An Act empowering the Corporation of the City of Victoria to lease the market building premises and otherwise carry into effect the Victoria Terminal Railway By-law, 1900		72
Chap. 87. . . .	An Act to incorporate the Yale Northern Railway Company		72
Chap. 46	An Act to provide for the collection of a tax on persons.	Is *ultra vires* in so far as it authorizes indirect taxation.	45, 64, 70, 72, 74
Chap. 10	An Act to amend the Companies' Act, 1897	Act provides penalty for default in filing returns and for fee for license to do business in province. Provincial Legislature is not authorized, as a measure of taxation, to impose penalty for not filing returns upon which the tax does not in anywise depend. Dominion Companies should not be subject to differential treatment, and taxes should not be imposed for provincial purposes where similar taxes are not in like manner imposed.	45, 65, 66, 72, 74
2 Edw. I. VII., 1902, chap. 26.	An Act to amend the British Columbia Fisheries Act, 1901.	Amendments do not go to extent of satisfactorily amending the Act of 1901	83
Chap. 27	An Act to amend the Bush Fire Act	Legislation must be considered as limited to railways within legislative authority of the Province and do not affect Dominion railways	83

TABLE OF ACTS, 1901-1903

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Act.	Title.	Reasons for Comments or Objections.	Page
Chap. 74. . .	An Act respecting compensation to workmen for accidental injuries suffered in the course of their employment.	Section 9 provides that Act shall not apply to persons in the naval or military service of the Crown thus suggesting that it is intended to affect the Crown not only in right of the Province, but also in right of Canada. In so far as it is intended to have this effect, it is *ultra vires*.	83
Chap. 66. . . .	An Act to amend the Law relating to Trades Unions.	Urged that Act should be disallowed as interfering with Dominion jurisdiction respecting (*a*) the regulation of Trade and Commerce (*b*) the rights and disabilities of aliens. Considered that it is in conflict with Trades Union Act of Canada. Act deemed *intra vires* of Provincial Legislature and objections to Act may be raised in the Courts.	84

PRINCE EDWARD ISLAND.

1 Edw. VII., 1901, chap. 10.	An Act to impose taxes on certain life insurance agents.	Considered inadvisable and against public interest to allow unequal taxation within a province as between residents of the Province and residents of other provinces of the Dominion doing business therein.	96
3 Edwd. VII., 1903, chap. 17.	An Act to consolidate and amend the several acts incorporating the City of Charlottetown.	Some of the powers conferred may be construed as in excess of provincial authority, as they relate to criminal laws or other subjects within the exclusive jurisdiction of the Dominion.	100
Chap. 18. . . .	An Act to consolidate and amend the acts incorporating the Town of Summerside.	do do do	100

NORTH WEST TERRITORIES

1 Edwd. VII., 1901, chap. 4.	An Ordinance respecting Public Works.	Section 28 appears to be *ultra vires* in view of provisions of subsection 1 of section 29 of chapter 17 of Dominion Statutes, 1894, as that subsection is enacted by section 29 of chapter 28 of the Statutes of 1897.	101
Chap. 7.	An Ordinance respecting Steam Boilers.	Objectionable inasmuch as no express exception from the requirements of an Ordinance is made as to Dominion Government boilers, or boilers used upon works under the exclusive jurisdiction of Parliament.	101
2 Edwd. VII., 1902, chap. .	An Ordinance respecting Public Health.	Doubtful if territorial assembly has power to prohibit ingress to the territories such legislation seeming to extend beyond private and local matters and all other subjects committed to the jurisdiction of the assembly.	113
Chap. 25. . . .	An Ordinance respecting the National Trust Company, Limited.	Subject to same objections stated with regard to Ontario Statutes, chapter 163 of 1902 (which see.)	113
3 Edwd. VII., 1903, chap. 25.	An Ordinance to amend chapter 87 of The Consolidated Ordinances, 1898, intituled, 'An Ordinance for the protection of Prairie and Forest fires.	Doubtful if provisions of Ordinance can affect railways under the legislative control of Canada.	115

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YUKON TERRITORY

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1 Edwd. VII. 1901, c. 33.	An Ordinance respecting the Legal profession.	Is *ultra vires* of the Commissioner in Council in so far as it is inconsistent with the Ordinance of 14th April, 1899, and to that extent has no legal operation.	119
No. 34.	An Ordinance respecting the procedure and practice to be observed in connection with the exercise of the civil jurisdiction of Police Magistrates, appointed under chapter 41 of Dominion Acts of 1901, entitled an Act to amend the Yukon Territory Act, and to make further provision for the administration of justice in the said territory.	Procedure too complicated and expensive, admitting also of too many delays for a Magistrate's Court where the object should be simplicity and summary disposition of cases.	120
2 Edwd. VII., 1902, No. 27.	An Ordinance respecting Schools.	Ordinance is defective in that it does not apparently make all the provisions required by section 14 of N. W. Territories Act, which having regard to section 6 of Yukon Territory Act, as enacted by 2 Edward VII chapter 34 section 2 limits the authority of the Commissioner in Council to make Ordinances respecting education.	122
3 Edwd. VII., 1903, No. 14.	An Ordinance respecting Liens in favour of Miners.	Ordinance has been held *ultra vires* by judgment of Hon. Mr Justice Craig.	124

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